

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**ALAMEDA HEALTHCARE & WELLNESS CENTER,
LLC**

Employer

and

Case 32-RC-377020

**SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 2015**

Petitioner

DECISION AND DIRECTION OF ELECTION

I am directing a self-determination *Sonotone* election for the petitioned-for unit of charge nurses because there is insufficient evidence to establish that they are statutory supervisors under the Act, as detailed below.

Alameda Healthcare and Wellness Center, LLC (the Employer) is a post-acute skilled nursing facility located in Alameda, California. On December 12, 2025, Service Employees International Union, Local 2015 (the Petitioner or Union) filed a representation petition under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent a proposed unit of approximately 70 full-time, regular part-time, and on-call/PRN Licensed Nurses, including Registered Nurses (RNs) and Licensed Vocational Nurses (LVNs) assigned to Medicine Cart Nurse, Treatment Nurse, and Desk/Resource Nurse duties at the Employer's facility.¹ The petitioned-for RNs and LVNs are categorized as Charge Nurses, and I will refer to them as such throughout this decision.

The Employer argues that the petitioned-for unit is inappropriate because the Charge Nurses are supervisors under Section 2(11) of the Act. Specifically, the Employer contends that the Charge Nurses possess the authority in the interest of the Employer to assign, discipline, and responsibly direct the Employer's Certified Nursing Aids (CNAs), or effectively recommend such actions, using independent judgment. The sole issue presented in this case is therefore whether the petitioned-for Charge Nurses are supervisors under the Act.

Two hearing officers of the National Labor Relations Board (the Board) conducted a hearing in this matter by videoconference on December 22, December 23, December 29, and December 30, 2025. The parties orally argued their respective positions prior to the close of hearing. As explained below, based on the record and relevant Board law, I find that the

¹ As noted in the Union's petition, the Union is not seeking to represent the AM or PM Licensed Nurse Supervisors. The Employer and the Union agreed on the record that Maria Theresa Cabutija and Elenita Macasaet are supervisors under the Act and should not be included in the unit.

Employer has not met its burden of establishing that the petitioned-for Charge Nurses are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I am directing a self-determination *Sonotone* election for the petitioned-for unit.

I. THE EMPLOYER'S OPERATIONS

The Employer operates a 75-room facility providing short and long-term patient care. Patients admitted into the Employer's facility are generally admitted from acute hospitals. The Employer's facility consists of two units: the Skilled Nursing (SNF) unit and the Sub-Acute unit.

Within the SNF unit, there are three stations. Station 1 is primarily long-term patients, Station 2 is a combination of long-term and short-term patients, and Station 3 is primarily short-term patients. The Sub-Acute unit has only one station, and patients in this unit have more complex medical needs than patients in the SNF unit.² The Employer's facility is roughly one block long, with SNF Station 3 at one end, then a lobby, then SNF Station 2, SNF Station 1, and the Sub-Acute unit at the other end.

The Employer's facility is headed by Administrator Lourdes Cantore. At the time of the hearing, Administrator Cantore had been in the role for about two months. Under Administrator Cantore, there are 13 department heads, including the Director of Nursing Services (DON), Director of Staff Development (DSD), Central Supply, Maintenance Supervisor, Director of Rehabilitation, Registered Dietitian, Dietary Services Supervisors, Business Office Manager, Director of Business Development, Admissions Director, Social Services Director, Medical Records Director, Activity Director, Accounts Payable/Payroll Coordinator, and Director of Environmental Services. These department heads are considered part of the Employer's management team, and they attend daily stand-up meetings. The management team typically works Monday-Friday, approximately 8:00AM-4:30PM. Both Administrator Cantore and the DON are on call when they are not at the facility, including in the evenings and on weekends. The record also indicates that while this was previously not the case, Administrator Cantore or a Manager on Duty is now at the facility in the evenings and on weekends.

In addition to the above-referenced department heads, the Employer has a range of staff not in the petitioned-for unit, including Minimum Data Set (MDS) Nurses, a Case Manager, an Infection Preventionist Nurse, a Scheduler, a Sub-Acute Coordinator, Licensed Nurse Supervisors, an Assistant Administrator, an Assistant Director of Nursing (ADON), Maintenance Assistants, Rehabilitation Aides, Cooks, Dietary Aides/Dishwashers, a Business Office Assistant, Social Services Assistants, Medical Records Assistants, Activity Assistants, Housekeepers, Janitors, and Laundry staff.

The petitioned-for Charge Nurses at the Employer's facility provide direct patient care in both the SNF unit and Sub-Acute unit. The record indicates that the Medicine Cart Nurse duties include providing care to patients based on physician orders and the patient's plan of care, administering medications, ensuring patient safety, monitoring and recording vital signs,

² Charge Nurses and CNAs working in the Sub-Acute unit must have additional training due to the complex nature of the medical care administered in this unit.

restocking supplies, and maintaining narcotics records. The Treatment Nurse duties include providing wound care to patients. The Desk/Resource Nurse duties include assisting with medicine cart duties as needed, processing admissions, contacting physicians, making appointments, getting supplies, and confirming patient transportation. Charge Nurses working in these three roles do not attend the daily management stand-up meetings.

CNAs at the Employer's facility assist with the daily living activities of patients in both units, including toileting, showering, feeding, changing bedding, and cleaning rooms. Both the petitioned-for Charge Nurses and the CNAs are required to answer patient call lights.

The petitioned-for Charge Nurses and the CNAs work a shift schedule. The SNF unit has three shifts: the AM shift from 7:00AM-3:30PM, the PM shift from 3:00PM-11:30PM, and the NOC shift from 11:00PM to 7:30AM. The Sub-Acute unit has two shifts: the AM shift from 6:00AM-6:30PM and the PM shift from 6:00PM-6:30AM. The petitioned-for Charge Nurses working as Medicine Cart Nurses and the CNAs work a rotation of four days on, two days off, while the petitioned-for Charge Nurses working as a Treatment Nurse or Desk/Resource Nurse work a rotation of five days on, two days off.

II. BOARD LAW ON SUPERVISORY STATUS

Supervisory status under the Act depends on whether an individual possesses authority to act in the interest of the employer in the matters and in the manner specified in Section 2(11) of the Act, which defines the term "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.

The above 12 statutory criteria (or "primary indicia") for supervisory status are read in the disjunctive, making possession of any single indicium sufficient to establish an individual as a supervisor. Thus, the Act sets forth a three-part test for determining supervisory status. Individuals are "statutory supervisors if: (1) they hold the authority to engage in any one of the 12 listed supervisory functions, (2) their 'exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,' and (3) their 'authority is held in the interest of the employer.'" *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712–713 (2001) (quoting *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573–574 (1994)). See also *Shaw, Inc.*, 350 NLRB 354, 355 (2007). The Board's seminal decision in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), sets forth the analysis to be applied in assessing supervisory status.³

³ In particular, the Board adopted specific definitions for "assign," "responsibly to direct," and "independent judgment." Board decisions involving these terms that predate *Oakwood Healthcare* may be of limited precedential value. On the same day it issued *Oakwood Healthcare*, the Board issued decisions in two companion cases—*Croft*

The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions; between effective recommendation and forceful suggestions; and between the appearance of supervision and supervision in fact. “[T]o exercise ‘independent judgment,’ an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data . . . [A] judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company rules or policies, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Oakwood Healthcare*, above at 692–693. Testimony that decisions are collaborative is also insufficient to show independent judgment free from the control of others. *CNN America, Inc.*, 361 NLRB 439, 460 (2014) (citing *KGW-TV*, 329 NLRB 378, 381–382 (1999)). See also *Veolia Transportation*, 363 NLRB No. 188, slip op. at 7–8 (2016) (*Veolia II*). The authority to effectively recommend an action means that the recommended action is taken without independent investigation by supervisors, not simply that the recommendation is ultimately followed. See *DirecTV U.S. DirecTV Holdings LLC*, 357 NLRB 1747, 1748–1749 (2011) (quoting *Children’s Farm Home*, 324 NLRB 61 (1997)). See also *Veolia Transportation Services, Inc.*, 363 NLRB No. 98, slip op. at 5 (2016) (*Veolia I*); *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998). The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. See *Oakwood Healthcare*, above at 693; *J. C. Brock Corp.*, 314 NLRB 157, 158 (1994).

Possession of authority consistent with any of the indicia of Section 2(11) of the Act is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., *Pepsi-Cola Co.*, 327 NLRB 1062, 1063 (1999); *Fred Meyer Alaska*, 334 NLRB 646, 649 fn. 8 (2001). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See *Michigan Masonic Home*, 332 NLRB 1409, 1410 (2000); *Chevron U.S.A.*, 308 NLRB 59, 61 (1992). The Board requires actual evidence of supervisory authority. Job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper authority, absent independent evidence of the possession of the described authority. See *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006) (testimony utterly lacking in specificity does not satisfy burden of establishing supervisory status); *Golden Crest*, 348 NLRB at 731 (purely conclusory evidence is not sufficient to establish supervisory status).

Nonstatutory indicia (or “secondary indicia”) can be used as background evidence to support a finding of supervisory status but are not dispositive without evidence demonstrating the existence of one of the primary or statutory indications of supervisory status. See *DirecTV*, 357 NLRB at 1750 (citing *Ken-Crest Services*, 335 NLRB 777, 779 (2001)). See also *PowerBack Rehabilitation*, 365 NLRB No. 119, slip op. at 2 (2017) (citing *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 890 fn. 4 (2014); *Northcrest Nursing Home*, 313 NLRB 491, 499 (1993)). Secondary indicia of supervisory status typically include, but are not limited to, the individual’s designation or perception as a supervisor; attendance at supervisory meetings; responsibility for a shift or phase of the employer’s operation; authority to grant time off to other employees; responsibility for inspecting the work of others; responsibility for reporting rule

Metals, Inc., 348 NLRB 717 (2006) and *Golden Crest Healthcare Center*, 348 NLRB 727 (2006)—to aid employees, employers, and unions in understanding its application.

infractions; receipt of privileges exclusive to members of management; and compensation at a rate higher than the employees supervised. The ratio of putative supervisors to employees is also a secondary indicator of supervisory status.

The burden of establishing supervisory status rests on the party asserting that status; here, the Employer. *Kentucky River*, 532 U.S. at 711-712; *Oakwood Healthcare*, 348 NLRB at 687. For a party to satisfy the burden of proving supervisory status, it must do so by “a preponderance of the credible evidence.” *Dean & Deluca*, 338 NLRB 1046, 1047 (2003); *Star Trek: The Experience*, 334 NLRB 246, 251 (2001). To meet this burden the party asserting supervisory status must provide sufficient detailed evidence of the circumstances surrounding the alleged supervisor’s decision-making process to demonstrate that the alleged supervisor was exercising the degree of discretion or independent judgment that is necessary to establish supervisory status. Any lack of evidence in the record is construed against the party asserting supervisory status. See *Dean & Deluca*, above at 1048; *Williamette Industries, Inc.*, 336 NLRB 743 (2001); *Michigan Masonic Home*, 332 NLRB at 1409; *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 fn. 8 (1999). Moreover, “[w]henver the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *G4S Regulated Security Solutions*, 362 NLRB 1072 (2015); *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989); *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 792 (2003). Consequently, mere inferences or conclusory statements without detailed specific evidence of independent judgment are insufficient to establish supervisory status. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

When dealing with issues concerning supervisory status, the Board cautions against construing supervisory status too broadly because the employee who is deemed a supervisor is denied rights which the Act is intended to protect. *Oakwood Healthcare*, 348 NLRB at 688 (quoting *Chevron Shipping Co.*, 317 NLRB 379, 380-381 (1995)). See also *Avante*, 348 NLRB at 1057. In *Oakwood Healthcare*, the Board observed that the term supervisor was not intended to include “straw bosses, lead men, and set-up men,” who are protected by the Act even though they perform “minor supervisory duties.” 348 NLRB at 688 (citing *NLRB v. Bell Aerospace Company*, 416 U.S. 267, 280-281 (1974)). The legislative history of Section 2(11) indicates that Congress intended to distinguish between employees who merely give assignment or direction of a routine or clerical nature in overseeing the work of others, and who are not part of management, from those supervisors truly vested with genuine management prerogatives. *George C. Foss Co.*, 270 NLRB 232, 235 (1984).

III. FACTS AND ANALYSIS

The Employer did not present evidence on the record that the petitioned-for Charge Nurses are involved in hiring, transferring, suspending, laying off, recalling, promoting, discharging, or rewarding other employees, or adjusting their grievances, or recommending such actions. I will therefore focus the facts and analysis in this decision on the remaining primary and secondary indicia of Section 2(11) supervisory status. Therefore, the primary indicia analyzed below are: assigning of work, disciplining, responsibly directing, or effectively recommending such action.

a. The Ability to Assign or Effectively Recommend Such Action.

i. Facts

The record indicates that Scheduler Lisseth Cruz creates the monthly schedule for the SNF unit. She testified that she creates the monthly schedule by inputting the Charge Nurses and CNAs based on their respective rotations—as previously noted, Charge Nurses working the medicine cart and CNAs work four days on, two days off while the Treatment Nurse and Desk/Resource Nurse work five days on, two days off. Scheduler Cruz testified that she inputs these rotations on a repeating basis throughout the month.

Scheduler Cruz then assigns the Charge Nurses working the medicine cart and the CNAs to stations within the unit (*i.e.*, Station 1, 2, or 3). She also assigns these Charge Nurses specific areas within the station (*e.g.*, Station 1A or Station 2B).

Once the monthly schedule for the SNF unit is created, Scheduler Cruz creates the unit's daily assignment sheet. The daily assignment sheet includes a more detailed outline of the station assignments. Scheduler Cruz testified that she assigns the Charge Nurses and CNAs their stations, and then the Charge Nurses assign the CNAs their specific rooms within the station. Administrator Cantore also testified that the Charge Nurses assign the CNAs to the patient. However, Scheduler Cruz also testified that the CNAs' station and room assignments for the most part stay consistent, and Charge Nurse Precious Morris testified that CNAs' assignments are permanent. Charge Nurse Jack Shearer testified that the Charge Nurses just go down the list of CNAs on the daily assignment sheet and assign the first CNA on the list the first set of rooms, the second CNA on the list the second set of rooms, and so on. Charge Nurse Morris, on the other hand, testified that she was trained not to touch the daily assignment sheet and that Maria Theresa Cabutija⁴ completes the CNA room assignments. Charge Nurse Morris further testified that when she has filled in as a Desk/Resource Nurse, rather than working the medicine cart, she performed the task of CNA room assignments. She testified, however, that like Charge Nurse Shearer, she simply assigns the first set of rooms to the first CNA on the list, the second set of rooms to the second CNA on the list, and so on. The documentary evidence of daily assignment sheets also appears to reflect consistent application of room assignments (*e.g.*, rooms 33-39 to the first CNA on the list, rooms 40-44 to the second CNA on the list, and so on).

The Sub-Acute unit scheduling process differs slightly from the SNF unit. Until recently, Scheduler Cruz created the schedule for both the SNF unit and the Sub-Acute unit. However, Sub-Acute Coordinator Danielle Archuleta now creates the Sub-Acute unit monthly schedule and the daily assignment sheet. Sub-Acute Coordinator Archuleta testified that most CNAs in the Sub-Acute unit work the same room assignment every shift. She testified that the CNAs usually divide up the floor and then tell the Charge Nurses their room assignments. She testified that if there are two CNAs on the shift, the entire unit is split evenly between them. If there are three CNAs on the shift, there is a template available that Sub-Acute Coordinator Archuleta creates that serves as a guideline that the CNAs can use for evenly distributing the rooms between them.

⁴ As previously noted, the parties have agreed that Cabutija is a supervisor.

The record indicates that the exact number of Charge Nurses and CNAs assigned to each shift is determined by state regulation—the Employer must meet a certain number of nursing hours per patient day (PPD). These requirements differ between the SNF unit and the Sub-Acute unit. Based on these requirements, there are typically four-five Charge Nurses and 16-18 CNAs per shift in the SNF unit. In the Sub-Acute unit, there are typically four Charge Nurses and two CNAs per shift. Administrator Cantore testified that while the state regulations establish the minimum number of Charge Nurses and CNAs per shift, the DON, with input from the Charge Nurses, can go above the minimum number if, for example, a patient requires one-to-one care.

Both Scheduler Cruz and Sub-Acute Coordinator Archuleta testified that if a Charge Nurse has an issue with the CNA room assignments, the Charge Nurse has the authority to change the assignment. Scheduler Cruz testified that these changes can be made at the beginning of the shift or mid-shift. Administrator Cantore testified that the Charge Nurse does not need approval to make these changes. The record indicates that there are primarily three circumstances when Charge Nurses make changes to CNA room assignments: acuity and census, patient requests, and family member requests. For example, if the patient/nurse ratio does not comply with state regulations, the Charge Nurse can reassign CNAs to ensure compliance. Another example is if a male CNA is assigned to a patient but the patient prefers a female CNA, the Charge Nurse can switch the CNA. The same is true if a family member makes such a request on behalf of a patient. Scheduler Cruz testified that patient and family member requests cannot be ignored by the Charge Nurse (unless the request conflicts with the above-referenced state regulations). Sub-Acute Coordinator Archuleta confirmed that if a patient or family member makes a request, that change must be made immediately. No discretion is permitted by the Charge Nurse. Administrator Cantore testified that Charge Nurses can also make changes based on patient behavior. For example, she testified that if there is a particularly aggressive patient, the Charge Nurse can make a switch to ensure that the CNA can handle the patient.

With respect to shifts on the monthly schedule or daily assignment sheet that are marked as “open,” because, for example, a CNA is on leave, the record indicates that Scheduler Cruz and Sub-Acute Coordinator Archuleta find coverage for the shift (depending on the unit). This is done by reaching out to the CNAs to see if anyone is interested in picking up an additional shift or by using a third-party registry. If a CNA calls out, Administrator Cantore testified that she, the DON, Scheduler Cruz for the SNF unit, and/or Sub-Acute Coordinator Archuleta for the Sub-Acute unit look for coverage. Administrator Cantore also testified that Charge Nurses can ask a CNA to work a double shift and that Administrator Cantore would prefer that the Charge Nurses handle the call-out rather than involving her to find coverage. Administrator Cantore testified that Charge Nurses can help find coverage for a CNA call-out by asking anyone on the floor if they want an extra shift or by texting CNAs they know might be available to cover. However, Charge Nurse Morris disputes this claim, testifying instead that Charge Nurses do not have the authority to sign off on a CNA working a double shift. Charge Nurse Morris testified that Charge Nurses are not involved in filling gaps in the schedule. She testified that Charge Nurses cannot be involved in filling gaps in the schedule because they do not have a contact list for the CNAs and cannot contact the third-party registry to request another CNA. Instead, she testified that if a CNA calls out, the Desk/Resource Nurse informs Scheduler Cruz (even after hours) to find a replacement. While Scheduler Cruz testified that she recently became an hourly employee and therefore requested that she not be contacted after hours, she testified that she is still

contacted after hours regarding coverage needs. The record indicates that while management is looking for coverage for a call out, Charge Nurses may change CNA room assignments to meet patient needs—temporarily redistributing the rooms to cover for the missing CNA. The record indicates that Charge Nurses do not need approval to make this type of room reassignment.

Some evidence on the record also indicates that Charge Nurses can approve modifications to CNA breaks and lunches, or grant overtime, without approval. For example, Scheduler Cruz testified that Charge Nurses can approve overtime for CNAs if patient care necessitates, for example, so that a CNA can give a patient a shower. Administrator Cantore also testified that if patient care necessitates, Charge Nurses can allow CNAs to take lunch later than scheduled or skip lunch altogether. Charge Nurse Morris disputes this, testifying that she cannot change CNA scheduled lunches or breaks. She testified that if a CNA needs to deal with a patient during lunch or a break, the CNA is either allowed to do so or must do so because administering that type of patient care is required by law under their scope of practice, not because a Charge Nurse approved a change to their schedule. Charge Nurse Morris testified that if a CNA fails to provide required patient care, it would be considered patient abuse or neglect. She testified that if she signs off on changes to a CNA timecard, she is not approving the change but rather witnessing that it occurred. In addition, the record indicates that if a CNA reports being sick while at work, the Charge Nurse can send the CNA home with no approval required.

Lastly, with respect to the assignment of tasks, the record indicates that CNAs know their job duties because they are trained to complete these duties, these duties are within their scope of practice as outlined by state regulations, and these duties are listed in the CNA job description and on the daily assignment sheet. The record further indicates that Charge Nurses verify that CNAs are completing these duties, can request that CNAs complete these duties if they have not already done so, can request that CNAs complete one of these duties at a time when they would not normally complete them (for example, asking a CNA to shower a patient on a non-shower day), or can request that CNAs not complete these duties (for example, telling a CNA not to shower a patient because the patient is being aggressive). The Charge Nurses do not need approval to make these requests of the CNAs. Charge Nurse Morris, however, testified that Charge Nurses do not tell CNAs in what order to complete their tasks. In addition, the record is clear that Charge Nurses do not direct CNAs to perform tasks outside their scope of practice. Moreover, it is worth noting that while Charge Nurses can request that CNAs complete certain tasks, the same goes for CNAs to Charge Nurses and Charge Nurses to physicians. For example, there is evidence on the record that CNAs will report to Charge Nurses that a patient has bruising or that medication was left in the patient's room so that the Charge Nurse can handle it; in addition, if a patient tells a Charge Nurse that the physician has not seen them, the Charge Nurse will notify the physician to attend to the patient.

ii. Analysis

The Employer argues that the petitioned-for Charge Nurses' ability to assign or effectively recommend such action confers upon them supervisory status under the Act. However, the record lacks sufficient evidence to make this finding.

The Board defines “assign” as “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*, 348 NLRB at 689. However, every instruction in the workplace is not assignment. Giving significant overall duties to an employee does not include “ad hoc instructions to perform discrete tasks”—these instructions are considered “direction” of a nonsupervisory nature. *Id.*

Assignments must also be based on independent judgment to confer supervisory status. However, assignments based on well-known employee skills do not involve independent judgment. *CNN America, Inc.*, 361 NLRB 439, 460 (2014) (citing *KGW-TV*, 329 NLRB 378, 378, 381–382 (1999), *enfd.* in relevant part 865 F.3d 740 (DC Cir. 2017)); see also *S.D.I. Operating Partners, L.P.*, 321 NLRB 111 (1996). Similarly, basing an assignment on whether the employee is capable of performing the job does not involve independent judgment. See *WSI Savannah River Site*, 363 NLRB 977, 979 (2016) (citing *Volair Contractors, Inc.*, 341 NLRB 673, 675 fn. 10 (2004)). Independent judgment is also not established by the assignment of recurrent and predictable tasks. *Shaw, Inc.*, 350 NLRB at 355–356; *Croft Metals*, 348 NLRB at 721 fn. 14 (citing *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002); *Bowne of Houston*, 280 NLRB 1222, 1223 (1986)). Moreover, assignments made in a merely routine, clerical, or perfunctory manner where there is only one self-evident choice do not require independent judgment. *Oakwood Healthcare*, 348 NLRB at 693.

Here, the record is clear that Scheduler Cruz assigns the CNAs in the SNF unit to their shifts, including dates, times, and stations. Scheduler Cruz assigns the CNAs to the monthly schedule using a repeated four days on, two days off rotation. Scheduler Cruz assigns a specific number of CNAs to each shift based on state regulations that determine the ratio of patients to nurses. The same is true for the CNAs in the Sub-Acute unit, but Sub-Acute Coordinator Archuleta rather than Scheduler Cruz makes the assignments (and there is no need for Sub-Acute Coordinator Archuleta to make station assignments because there is only one station in the Sub-Acute unit). There is no evidence that the petitioned-for Charge Nurses are involved in creating the monthly schedule or daily assignment sheet in either the SNF unit or Sub-Acute unit.

Once Scheduler Cruz and Sub-Acute Coordinator Archuleta make the monthly schedule and daily assignment sheets for their respective units, the CNAs need room assignments within each station. The record contains conflicting evidence regarding Charge Nurse involvement in making CNA room assignments in the SNF unit. Scheduler Cruz and Administrator Cantore testified that the Charge Nurses make the CNA room assignments. In contrast, Charge Nurse Morris testified that as a Charge Nurse working the medicine cart, she was not trained to modify the daily assignment sheet to make CNA room assignments. Moreover, Scheduler Cruz testified that CNA room assignments for the most part stay consistent, and Charge Nurse Morris testified that CNA room assignments are permanent. Charge Nurse Morris did testify, however, that when filling in as the Desk/Resource Nurse, she has made CNA room assignments. However, both she and Charge Nurse Shearer testified that when making CNA room assignments, they assign the first CNA listed on the daily assignment sheet the first set of rooms, the second CNA on the list the second set of rooms, and so on. This conflicting evidence concerning the level of Charge Nurse involvement in making CNA room assignments in the SNF unit therefore undermines the Employer’s argument that the petitioned-for Charge Nurses have the statutory

ability to assign given that “[w]henver the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *G4S Regulated Security*, 362 NLRB at 1073; *Phelps Community Medical Center*, 295 NLRB at 490; *Dole*, 339 NLRB at 792.

To the extent there is record evidence that the Charge Nurses in the SNF unit are involved in making CNA rooms assignments, these assignments are clearly of a routine and clerical nature. The testimony indicates that the room assignments either do not change, rarely change, or that the Charge Nurses make the assignments simply by going down the list numerically. This requires no independent judgment. See *NLRB v. Meenan Oil Co.*, 139 F.3d 311, 321 (2d Cir. 1998) (dispatchers assigning based on computerized system and time commitments set by customer service representatives were not supervisors); *B.P. Oil, Inc.*, 256 NLRB 1107, 1109-10 (1981) (decision-making governed by “preexisting priorities” and “commonsense considerations” lacks independent judgment), enforced, 681 F.2d 804 (3d Cir. 1982).

Charge Nurse involvement in making CNA room assignments in the Sub-Acute unit appears, based on the record, to be even more limited than in the SNF unit. Sub-Acute Coordinator Archuleta testified that most CNAs work the same room assignment every shift. She testified that the CNAs usually divide up the floor and then tell the Charge Nurse their room assignments. If there are two CNAs on the shift, the entire unit is split between them. If there are three CNAs on the shift, there is a template available that Sub-Acute Coordinator Archuleta creates that serves as a guideline for evenly distributing the rooms between the CNAs. The record thus indicates that Charge Nurses are not involved in making these room assignments.

After the monthly schedule, the daily assignment sheet, and the room assignments are completed, there is evidence in the record that changes to initial CNA assignments do occur, and that Charge Nurses can make those changes. According to testimony, there are typically three circumstances when Charge Nurses reassign CNAs: to equalize patient distribution in response to, for example, a CNA calling off; in response to patient or family member requests, for example, for a specific gender CNA; or based on patient temperament, for example, aggressive or hostile behavior by a patient toward a specific CNA. However, none of these types of changes are made using independent judgment. With respect to equalizing patient distribution, a specific patient to nurse ratio is mandated by state regulations, and reassigning CNAs to conform with these requirements does not require independent judgement. Moreover, the Board has held that the “mere equalization of workloads” does not require independent judgment. *Lynwood Manor*, 350 NLRB 489, 490 (2007). With respect to making changes based on patient or family member requests, the record demonstrates that Charge Nurses have no discretion when making these changes. If a request is made, it must be honored, so long as it does not conflict with state regulations. There is thus no independent judgment utilized when honoring these requests. Lastly, reassigning a CNA based on a temperament mismatch also does not require independent judgment. See *Northeast Center for Rehabilitation & Brain Injury*, 372 NLRB No. 35, slip op at 10–11 (2022) (“factors such as distribution of difficult assignments [and] gender . . . do not rise to a level that would constitute independent judgment”); *G4S Government Solutions, Inc.*, 363 NLRB 977, 979 (201 (citing *Volair Contractors, Inc.*, 341 NLRB 673, 675 fn. 10 (2004) (“whether . . . employees have the skill and knowledge to staff a particular post . . . do[es] not require the use of independent judgment sufficient to support a supervisory finding”)).

The Employer also asserts that Charge Nurses are supervisors because they can allow CNAs to work additional hours (either a double shift or overtime) and they can modify CNA lunch or break schedules without seeking higher approval. However, the record contains conflicting evidence on these matters. Regarding additional hours, Administrator Cantore testified that Charge Nurses can ask CNAs if they want to work a double shift if there is a gap in the schedule, and Scheduler Cruz testified that Charge Nurses can approve CNA overtime based on patient care needs. However, testimony on the record, including by Administrator Cantore and Scheduler Cruz, indicates that there is typically a high degree of management involvement in filling open shifts on the schedule and finding coverage when a CNA calls out. In addition, Charge Nurse Morris testified that Charge Nurses do not have the authority to sign off on a CNA working a double shift, that Charge Nurses are not involved in filling gaps in the schedule, and that Charge Nurses do not approve CNA overtime. As noted previously, supervisory status cannot be established based on conflicting or inconclusive evidence. See *G4S Regulated Security*, 362 NLRB at 1073; *Phelps Community Medical Center*, 295 NLRB at 490; *Dole*, 339 NLRB at 792. Even if Charge Nurses are involved in these matters, there is no indication that their involvement requires the exercise of independent judgment. Rather, asking a CNA if they want to work a double shift or allowing a CNA to work overtime based on patient care needs is routine and clerical in nature, and is necessary to ensure compliance with state regulatory requirements regarding patient/nurse ratios and CNA scope of practice. See *Oakwood Healthcare*, 348 NLRB at 693 (“a judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement”).

Regarding break and lunch schedules, the record indicates that if a CNA is completing patient care duties, such as toileting, showering, or feeding a patient, the CNA must complete those duties even if it impacts their scheduled break or lunch. While Administrator Cantore testified that these changes to CNA breaks and lunches are approved by the Charge Nurses, Charge Nurse Morris claims that is not the case. Charge Nurse Morris testified that CNAs are required to complete their patient care duties as part of their scope of practice, and that failing to do so would be considered patient neglect or abuse (for example, leaving a patient in the shower in order to take lunch on time). Charge Nurse Morris testified that if she signs a timecard change based on this type of schedule change, she is not approving the change but rather witnessing that the change indeed occurred. Given the conflicting evidence on the record regarding the ability of Charge Nurses to modify scheduled CNA breaks and lunches, supervisory status cannot be established based on this factor. Moreover, even assuming Charge Nurses do approve changes to CNA breaks and lunches, approving these changes requires no independent judgment by the Charge Nurses. Instead, approving these changes to CNA schedules is routine and clerical in nature and simply ensures the Employer’s compliance with state regulatory requirements to provide patient care. See *Oakwood Healthcare*, 348 NLRB at 693. Additionally, with respect to Charge Nurses sending CNAs home if the CNA reports being sick, the Board has held that simply permitting an employee to leave work based on illness does not involve the use of independent judgment. See, e.g., *Sam’s Club*, 349 NLRB 1007, 1014 (2007); *Bakersfield Californian*, 316 NLRB 1211, 1224 (1995) (authority to allow employees to leave early for illness insufficient to constitute supervisory authority under the Act).

Finally, the Employer argues that the petitioned-for Charge Nurses are supervisors because they can assign tasks to CNAs. However, this argument fails due to insufficient evidence that the Charge Nurses assign tasks to the CNAs using independent judgment. Instead, the record is clear that CNA duties are outlined in their scope of practice, in their job description, and on the daily assignment sheets. While Charge Nurses can request that CNAs perform certain duties, such as changing a patient's bedding, these requests are all merely reminders for the CNA to do what is pre-established through their scope of practice, job description, and daily assignments. The record demonstrates that Charge Nurses never request that a CNA complete a task outside their scope of practice. Given that these tasks are already required of the CNAs, such "assignments" by the Charge Nurses do not require independent judgment. This is particularly true given that the Board has determined that the assignment of recurrent and predictable tasks, such as those within the CNAs' scope of practice and job description, does not require independent judgment. *Shaw, Inc.*, 350 NLRB at 355–356; *Croft Metals*, 348 NLRB at 721 fn. 14 (citing *Franklin*, 337 NLRB at 831; *Bowne*, 280 NLRB at 1223). The non-supervisory nature of these assignments is further demonstrated by the fact that CNAs can also ask Charge Nurses to complete certain duties within the Charge Nurse scope of practice, such as handling bruising on a patient, and Charge Nurses can make these requests of physicians within the physician scope of practice, such as attending to a patient in a timely manner. The Board has held that quality control work—inspecting and reporting the work of others—is not supervisory. *Brown & Root, Inc.*, 314 NLRB 19, 21 fn. 6 (1994).

iii. Conclusion

Based on the above analysis, the Employer failed to establish that the petitioned-for Charge Nurses assign CNAs, or effectively recommend such action, within the meaning of Section 2(11) of the Act.

b. The Ability to Discipline or Effectively Recommend Such Action.

i. Facts

The record contains evidence that at least on some occasions the petitioned-for Charge Nurses are involved to some degree in issuing corrective action to CNAs. Administrator Cantore and Scheduler Cruz testified that Charge Nurses can initiate and complete corrective action forms for CNAs. Sub-Acute Coordinator Archuleta testified that Charge Nurses can issue verbal and written warnings to CNAs, and she testified that she has made it clear to the Charge Nurses in the Sub-Acute unit that it is within their scope of practice to deliver corrective action to CNAs. Charge Nurse Shearer testified that Charge Nurses can issue verbal warnings to CNAs. The record indicates that verbal warnings do not always result in anything being documented in the employee file, but written corrective action forms go into the employee file. Charge Nurse Morris testified that Charge Nurses do not issue corrective action to CNAs.

Administrator Cantore and Scheduler Cruz testified that Charge Nurses can issue corrective action to CNAs without approval from management. Scheduler Cruz testified that she has encouraged Charge Nurses to report issues with CNAs because it is helpful to have the documentation. Administrator Cantore also testified that she or the DON will occasionally

review corrective action forms drafted by Charge Nurses to make sure they do not violate any laws or regulations, but that review is not required. On the other hand, Charge Nurse Morris testified that if a Charge Nurse has a concern about a CNA, the Charge Nurse will report it to the DON or DSD, and the DON or DSD will handle correcting the CNA. Moreover, Charge Nurse Morris testified that even when she serves as the Desk/Resource Nurse, she is not given access to corrective action forms nor told where they are located such that she would be able to issue any corrective action without guidance from management. Sub-Acute Coordinator Archuleta testified that if there is a high degree of correction for a CNA, Charge Nurses need to consult management. Administrator Cantore testified that terminations go through her, and she takes them up with the Head of Human Resources to get final approval.

With respect to the impact of any corrective action forms issued to CNAs by Charge Nurses, Administrator Cantore testified that she considers corrective actions forms that are in an employee's file when making disciplinary decisions. She testified that corrective action forms in an employee's file also impact employee evaluations.

The record contains several examples of Charge Nurse involvement in CNA corrective action. Administrator Cantore provided six examples that she located from Employer records from a period of at least over a year. In the first, two Charge Nurses made a recommendation for a corrective action form to be issued to a CNA, which a unit manager delivered. In the second, a Charge Nurse wrote up a CNA for not cleaning a patient despite the CNA being asked to do so and for not being available when paged. In the third, without providing additional information, Administrator Cantore testified that two Charge Nurses signed a CNA corrective action form. In the fourth, Administrator Cantore testified that a Charge Nurse wrote up a CNA for not cleaning a patient but Administrator Cantore testified that the corrective action form had not yet, at the time of the hearing in the instant matter, been delivered to the CNA. In the fifth, Administrator Cantore testified that a Charge Nurse wrote up a CNA likely for not changing a patient after being instructed to do so (Administrator Cantore was not clear on the details). In the sixth and final example, Administrator Cantore testified that a Charge Nurse verbally reported to the Sub-Acute manager that a CNA refused to provide patient care. Administrator Cantore also testified generally that if a CNA does not follow proper infection protocol, such as not wearing personal protective equipment, then a Charge Nurse can correct the CNA.

Scheduler Cruz provided two examples, over a period of three years, of Charge Nurses being involved in CNA corrective action. In the first, a Charge Nurse made a written statement about a CNA who regularly called out, and the Charge Nurse gave the statement to the DON or ADON. In this example, the DON asked Scheduler Cruz to independently investigate the call-out problem. Scheduler Cruz subsequently informed the DON of her findings, and he submitted them to the Administrator, who requested approval from Human Resources for the CNA to be terminated. In the second example, a Charge Nurse complained to Scheduler Cruz about the performance of two CNAs. Scheduler Cruz encouraged the Charge Nurse to write a statement. The Charge Nurse wrote a statement which she gave to the DSD, who then wrote up the CNAs. In both examples, the Charge Nurse was not present during the CNAs' disciplinary meeting.

Sub-Acute Coordinator Archuleta testified broadly that Charge Nurses often write statements that form the basis of Sub-Acute Coordinator Archuleta's corrective actions for

CNAs. Sub-Acute Coordinator Archuleta also provided an example when two Charge Nurses filled out a corrective action form for a CNA after hours. In this example, one of the Charge Nurses spoke on the phone with Sub-Acute Coordinator Archuleta, the Charge Nurse asked for guidance via text on filling out the corrective action form, Sub-Acute Coordinator Archuleta requested via text that the Charge Nurse send her the corrective action form for review, and Sub-Acute Coordinator Archuleta spoke with the DON to have the CNA in question transferred from the Sub-Acute unit to the SNF unit. Sub-Acute Coordinator Archuleta also provided an example when a Charge Nurse refused to issue a corrective action to a CNA because the Charge Nurse never explicitly told the CNA that they were supposed to complete a specific task (and therefore the Charge Nurse did not feel the corrective action was justified).

Charge Nurse Nisma Zipporah Thomas testified that she has written two CNA corrective action forms but only delivered one. Based on the record evidence, it is possible that at least one of these examples, if not both, overlap with two of Administrator Cantore's examples. For the corrective action form that was delivered, Charge Nurse Thomas testified that she found a CNA texting in the room of a patient who had not yet received their food tray, and there was another patient who had also not yet received their food tray. The CNA had also not been responsive when paged. Charge Nurse Thomas testified that she got the corrective action form from the DON, attempted to talk to the Administrator before completing the corrective action form because the Treatment Nurse and Scheduler Cruz advised her to talk to the Administrator before issuing the corrective action form. She was unable to talk to the Administrator so Charge Nurse Thomas then filled out the corrective action form and left it with the Administrator's Assistant. Days later, the Administrator approached Charge Nurse Thomas asking if she would still like to issue the corrective action form to the CNA. Charge Nurse Thomas and the Administrator then delivered the corrective action form to the CNA. For the corrective action form that was not delivered, Charge Nurse Thomas testified that the CNA had not changed a patient and had not informed the Charge Nurse when they were taking their lunch. This corrective action was never issued because Charge Nurse Thomas testified that the Administrator told her that by the time the CNA returned to work after being out, the 7-day period for issuing the corrective action lapsed. Sub-Acute Coordinator Archuleta testified that when she worked as a Charge Nurse in the SNF unit, she only issued one corrective action based on a family member complaint of patient neglect. She testified that on that occasion, the DON gave her the corrective action form, which she issued to the CNA and then gave to the DON.

Lastly, the record indicates that if a CNA refuses to work, exhibits behavior inappropriate for the workplace, violates Employer policies or procedures, or is abusing a patient, the Charge Nurse can send the CNA home.

Despite the above-referenced examples of Charge Nurse involvement in issuing corrective action to CNAs, there is minimal evidence on the record of a progressive discipline policy. While Administrator Cantore testified broadly that the Employer does have a progressive discipline policy and the Charge Nurse job description states that Charge Nurses will "[f]ollow[] required coaching and progressive disciplinary procedures," Charge Nurse Morris testified that she has never seen nor been trained on any Employer progressive discipline policy. Further, the Employer failed to present any documentary evidence of a progressive discipline policy. Several

corrective action forms presented by the Employer also do not have anything checked off on the “actions being taken” section.

ii. Analysis

The Employer contends that the petitioned-for Charge Nurses’ involvement in disciplining CNAs, or effectively recommending such action, is sufficient to establish that the Charge Nurses are supervisors under the Act. However, the record lacks sufficient evidence to make this finding.

First, to establish supervisory status based on discipline, the evidence must show that the purported supervisor may discipline employees, and that they utilize independent judgement in doing so. *Tree-Free Fiber Co.*, 328 NLRB 389, 391–392 (1999). Here, the record contains conflicting evidence as to whether the petitioned-for Charge Nurses even discipline CNAs—while several witnesses testified that the Charge Nurses are involved to at least some degree in disciplining CNAs, Charge Nurse Morries denies any involvement. Such conflicting testimony undermines the Employer’s argument of supervisory status based on this indicium. See *G4S Regulated Security*, 362 NLRB at 1073; *Phelps Community Medical Center*, 295 NLRB at 490; *Dole*, 339 NLRB at 792.

To the extent there is testimony that the Charge Nurses are involved in disciplining CNAs, it is not clear that it occurs on a regular basis. For the approximately 70 petitioned-for Charge Nurses at the Employer’s facility, there are only a few examples on the record of their involvement in disciplining CNAs. Instead, Scheduler Cruz, for example, could only testify to two occurrences in three years. Sub-Acute Coordinator Archuleta testified that as a Charge Nurse for over a year, she was only involved in one CNA corrective action. Charge Nurse Thomas similarly only testified to two examples, one of which was not even delivered to the CNA. While Administrator Cantore provided six examples of Charge Nurse involvement in CNA corrective action, these instances were pulled from the Employer’s records for a period of more than a year. The Board has held that the lack of “an established pattern or predictable schedule for when and how often” supervisory duties are assumed defeats a showing that the individuals irregularly performing said duties are supervisors within the meaning of the Act. See *Oakwood Healthcare*, 348 NLRB at 699. Moreover, even if the Charge Nurses issue verbal warnings to the CNAs on a more regular basis, verbal warnings, with no corresponding written documentation, are insufficient to establish supervisory status. The Board has held that the “authority to issue verbal reprimands is, without more, too minor a disciplinary function to constitute supervisory authority.” *Republican Co.*, 361 NLRB at 99. The lack of an established pattern of Charge Nurses issuing discipline to CNAs further undermines the Employer claim of supervisory status based on this indicium.

On the irregular occasions when Charge Nurses are involved in disciplining CNAs, it is not clear from the record that the Charge Nurses utilize independent judgment when doing so. Independent judgment requires that “an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare*, 348 NLRB at 693. Judgement is also not independent if it is controlled by detailed instructions. *Id.* In the instant case, examples on the

record of Charge Nurse involvement in CNA corrective action include instances when CNAs failed to clean a patient, change a patient, or feed a patient; or refused to provide patient care; or when a CNA had attendance issues. As previously noted in this decision, these are responsibilities detailed in the CNA scope of practice or job description or provided under Employer policies and procedures. Disciplining CNAs for failure to uphold these established responsibilities does not require independent judgment. Moreover, there are examples on the record in which managers influenced Charge Nurses in the corrective action process; for example, when Scheduler Cruz, a manager, encouraged Charge Nurses to get involved in CNA corrective action or to speak to the Administrator about CNA corrective action—indicating that the Charge Nurses in these circumstances were not free from the control of others.

Relatedly, for the authority to issue discipline to establish supervisory status, the discipline issued “must lead to personnel action without independent investigation by upper management.” *Veolia I*, 363 NLRB at 8 (citing *Sheraton Universal Hotel*, 350 NLRB 1114, 1116 (2007); *Beverly Health & Rehabilitation Services, Inc.*, 335 NLRB 635, 669 (2001), *enfd.* in pertinent part 317 F.3d 316 (D.C. Cir. 2003)). See also *Lucky Cab Co.*, 360 NLRB 271 (2014) (quoting *Franklin*, 337 NLRB at 830); *Pepsi-Cola Bottling Co.*, 154 NLRB 490, 493–494 (1965). Here, there is at least one example of independent investigation by upper management. Scheduler Cruz testified that she investigated CNA attendance issues per the request of the DON prior to an employee being terminated. In addition, Administrator Cantore testified that she or the DON occasionally reviews the CNA corrective action forms drafted by Charge Nurses to make sure they do not violate any laws or regulations. Sub-Acute Coordinator Archuleta also requested to review at least one corrective action form drafted by a Charge Nurse. These examples demonstrate that independent investigations occur, and even when they do not, upper management is still often involved in the corrective action process.

Further, “[w]arnings that simply bring the employer’s attention to substandard performance without recommendations for future discipline serve nothing more than a reporting function and are not evidence of supervisory authority.” *Republican Co.*, 361 NLRB at 97 (citing *Oak Park Nursing Care Center*, 351 NLRB 27, 30 (2007); *Ohio Masonic Home*, 295 NLRB 390, 393–394 (1989)). See also *Passavant Health Ctr.*, 284 NLRB 887, 889 (1987) (“the mere factual reporting of oral reprimands and the issuance of written warnings that do not alone affect job status or tenure do not constitute supervisory authority”); *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890 (1997) (putative supervisors used forms to document incidents, but form did not prompt recommendation and there was no evidence putative supervisors otherwise recommended whether discipline should ensue). However, warnings may qualify as disciplinary under the Act if they routinely or automatically lead to job-affecting discipline under a defined progressive disciplinary system. *Republican Co.*, above at 99. “It is the [e]mployer’s burden to prove the existence of such a system, as well as the role warnings issued by putative supervisors play within it. If an ostensibly progressive system is not consistently applied, progressive discipline has not been established.” *Veolia II*, above at 1844 (citing *Ken-Crest Services*, 335 NLRB at 777–778; *Republican Co.*, above at 99 fn. 8; *Ten Broeck Commons*, 320 NLRB at 809).

Here, most examples on the record of Charge Nurse involvement in CNA discipline involve the Charge Nurse bringing the Employer’s attention to substandard CNA performance without recommendations for future discipline. There are several examples on the record of

Charge Nurses merely submitting statements about CNA performance to someone in upper management, such as Sub-Acute Coordinator Archuleta, who then wrote up the CNA corrective action. These statements by the Charge Nurses serve nothing more than a reporting function and are not evidence of supervisory authority. Moreover, the record lacks evidence that the corrective action issued by the Charge Nurses routinely or automatically leads to job-affecting discipline for the CNAs. For example, several corrective action forms submitted on the record do not include anything in the “actions being taken” section. While Administrator Cantore testified that she considers corrective action forms in an employee’s personnel file when determining discipline, and they are also considered for employee evaluations, purely conclusory statements are insufficient to establish supervisory status. See *Golden Crest*, 348 NLRB at 731. There is only one specific example of a corrective action issued by a Charge Nurse leading to a job-affecting discipline—a termination—and notably, this case included an independent investigation by upper management. As previously noted, the authority to effectively recommend an action means that the recommended action is taken *without* independent investigation by supervisors, not simply that the recommendation is ultimately followed. *DirectTV U.S. DirectTV Holdings LLC*, 357 NLRB 1747, 1748–1749 (2011) (quoting *Children’s Farm Home*, 324 NLRB 61 (1997)).

The Employer has also failed to establish that it has a progressive disciplinary system. While Administrator Cantore testified that the Employer has a progressive disciplinary system, Charge Nurse Morris testified that she has never seen nor been trained on any such policy. Any lack of record evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 n.8 (1999). Moreover, while the Charge Nurse job description references progressive discipline, job descriptions alone do not establish supervisory authority without tangible evidence of the putative supervisor actually possessing that statutory authority under the Act. See *Golden Crest*, 348 NLRB at 731. Here, there is insufficient evidence that when Charge Nurses are involved in CNA corrective action, they are following a defined progressive disciplinary system.

Lastly, the record indicates that Charge Nurses can send CNAs home for patient abuse or for inappropriate workplace conduct. However, to the extent that a Charge Nurses may tell a CNA to go home because of flagrant violations of common working conditions, such as patient abuse or inappropriate workplace conduct, the Board has held that this does not establish disciplinary authority under the Act. *Phelps Community Medical Center*, 295 NLRB at 492. See also *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999) (citing *Washington Nursing Home*, 321 NLRB 366 (1996); *Loffland Bros. Co.*, 243 NLRB 74, 75 fn. 4 (1979) (citing *Greatlakes Towing Co.*, 168 NLRB 695, 700 (1967) (an employee’s ability to send another home for drunkenness does not confer supervisory authority on that basis)).

iii. Conclusion

Based on the above analysis, the petitioned-for Charge Nurses’ involvement in discipline is insufficient to make them supervisors under Section 2(11) of the Act.

c. The Ability to Responsibly Direct or Effectively Recommend Such Action.

i. Facts

As previously outlined, the record indicates that Charge Nurses can request that CNAs complete certain tasks within the CNA scope of practice and regularly assigned duties. There is also evidence on the record, as previously outlined, that Charge Nurses are involved to some extent in CNA corrective action, typically relating to CNAs failing to complete certain tasks within their scope of practice and regularly assigned duties or failing to comply with the Employer's policies and procedures. The Charge Nurse job description also states that the Charge Nurses will "[p]rovide supervision and support for nursing staff in accordance with their level of training and the resident's acuity;" will "[f]unction[] as a role model to staff;" and will "[r]outinely observe[] and guide[] direct patient care staff for appropriate technique and adherence to facility policies and procedures."

In addition, there is some evidence on the record that Charge Nurses can be held accountable for the actions of CNAs. Sub-Acute Coordinator Archuleta testified that when she was working as a Charge Nurse in the SNF unit, she was advised during a training that Charge Nurses are responsible for oversight of CNAs. Administrator Cantore testified that a Charge Nurse could face adverse consequences if a CNA's failure to perform a task has a negative impact on a patient. Charge Nurse Shearer testified that Charge Nurses are held accountable for CNAs because CNAs fall under the Charge Nurse license. However, Charge Nurse Shearer testified that this accountability for CNAs stems from state regulations. He specified that the state could suspend or revoke a Charge Nurse license if an issue with a CNA was reported to the state. Despite this broad testimony concerning Charge Nurse accountability for CNAs, there is only one example on the record of a Charge Nurse being disciplined or held directly accountable for a CNA's actions. In this example, a Charge Nurse working the medicine cart was disciplined by a Desk/Resource Nurse because a CNA failed to report to the Charge Nurse where a certain patient was located and as a result the Charge Nurse did not know the patient's whereabouts.

ii. Analysis

The Employer argues that the petitioned-for Charge Nurses are supervisors because they responsibly direct the work of the CNAs and can be held accountable for the CNAs' performance of directed tasks.

The Board's decision in *Oakwood Healthcare* is instructive as to responsible direction. In that case, the Board asserted that "to establish accountability for purposes of reasonable direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary." 348 NLRB at 692. Moreover, it must be shown that "there is a prospect of adverse consequences for the putative supervisor if [they do] not take these steps," for example, with a negative performance evaluation or imposition of discipline. *Id.* In *Croft Metals, Inc.*, the Board held that lead persons responsibly directed crews, relying on evidence that the employer "disciplined lead persons by issuing written warnings to them because of the failure of their crews to meet production goals or because of other shortcomings of their crews." 348 NLRB at 722. The ability to direct work and take corrective action, without supporting evidence of accountability, therefore does not confer supervisory status.

Here, as previously addressed, the record indicates that the petitioned-for Charge Nurses have limited authority to direct the work of CNAs. While Charge Nurses can request that CNAs complete certain tasks that fall within the CNA scope of practice and regularly assigned duties, such as changing a patient's bedding or showering a patient, Charge Nurses cannot direct CNAs to complete tasks outside these pre-established responsibilities. In addition, if a CNA fails to complete such a task, Charge Nurses are involved to some extent in CNA corrective action, such as giving the CNA a verbal warning or occasionally drafting a written warning. However, the record is limited as to the frequency and impact of such corrective action. As noted, the Board has outlined that responsible direction does not include "minor supervisory functions performed by lead employees, straw bosses, and setup men." *Oakwood Healthcare*, 348 NLRB at 690.

In addition, the record lacks evidence that Charge Nurses are held accountable for CNAs. First, the Employer's Charge Nurse job description, to the extent it references such accountability, cannot be afforded much weight. This document serves only as "paper authority" and is insufficient, on its own, to establish supervisory status. See, e.g., *Southside Medical Center, Inc.*, 356 NLRB 295, 295 fn. 1 (2010) (affirming nonsupervisory finding where job description listed supervisory indicia and incumbent signed an acknowledgement, but the record contained no specific detailed evidence incumbent possessed supervisory authority or used independent judgment); *Golden Crest*, 348 NLRB at 731 (job descriptions alone do not establish supervisory authority without tangible evidence that the putative supervisors actually possess supervisory authority under the Act).

Second, the record indicates that Charge Nurse accountability for CNAs primarily stems from state regulations and licensing requirements, not from evidence that Charge Nurses actually face adverse consequences from the Employer for CNA actions, such as a negative performance evaluations or discipline. Broad and generalized testimony that the Charge Nurses are responsible for the CNAs and that Charge Nurses could face adverse consequences due to the actions of the CNAs, without additional evidence, is insufficient to find supervisory status. See *Buchanan Marine, L.P.*, 363 NLRB No. 58 (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); *Cook Inlet Tug & Barge, Inc.*, 362 NLRB at 1174 (finding testimony "that captains could be held accountable for deckhands' errors, through discipline or discharge" too generalized to establish accountability where "witnesses did not specify what types of errors by deckhands would result in what levels of discipline for their captains" or "provide any concrete examples of instances in which a deckhand's error or performance led to adverse consequences for his or her captain"). The record contains only one specific example of a Charge Nurse being disciplined for the actions of a CNA, which is of minimal probative value. One example fails to conclusively demonstrate that the Employer holds the approximately 70 petitioned-for Charge Nurses accountable for the actions of the CNAs. Further, in this example, the Charge Nurse was primarily disciplined for their own actions—not knowing the whereabouts of a patient—rather than specifically for the actions of the CNA.

iii. Conclusion

Based on the above analysis, the Employer failed to prove by a preponderance of the evidence that the petitioned-for Charge Nurses responsibly direct, or effectively recommend such action, such that they are supervisors under Section 2(11) of the Act.

d. Secondary Indicia

i. Facts

The Employer's Charge Nurses and CNAs are both paid hourly, with CNAs in the SNF unit earning \$24.60 an hour, LVN Charge Nurses in the SNF unit earning \$40 an hour, and RN Charge Nurses in the SNF unit earning \$50 an hour. There is a \$1 hourly difference for each level in the Sub-Acute unit.

There is also some limited evidence on the record that Charge Nurses are involved in training CNAs.

ii. Analysis and Conclusion

In the absence of any compelling evidence of primary indicia of supervisory status, secondary indicia are insufficient to establish supervisory status. In the instant case, the limited evidence of secondary indicia—specifically that Charge Nurses are paid more than CNAs and that Charge Nurses may be involved to some extent in training CNAs—does not support a finding of supervisory status because there is insufficient evidence of primary indicia of supervisory status to open the door to analyze secondary indicia of supervisory status. See *Stanford New York LLC d/b/a Stanford Hotel*, 344 NLRB No. 69 (2005); *Volair Contractors, Inc.*, 341 NLRB 673, 674 n. 8 (2004). See also *Tri-City Motor Company, Inc. d/b/a Auto West Toyota*, 284 NLRB 659, 661 (1987) (higher wage rates for foremen do not conclusively prove supervisory status).

IV. CONCLUSIONS AND FINDINGS

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization which 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. In accordance with Section 9(b) of the Act, I make the following unit determinations:

Voting Group A – Professional Unit

Included: All full-time, regular part-time, and on-call PRN Registered Nurses assigned to Charge/Med-Cart Nurse, Desk/Resource Nurse, and Treatment/Wound Nurse duties who are employed by the Employer at the nursing facility currently located at 430 Willow Street, Alameda, CA 94501.

Excluded: All other licensed nurses including the Director of Nursing, Assistant Director of Nursing, Director of Staff Development, Coordinators, MDS Nurses, Infection Prevention (IP) Nurses, AM Licensed Nurse Supervisors, Licensed Nurse Supervisors, and all other employees.

Voting Group B – Nonprofessional Unit

Included: All full-time, regular part-time, and on-call PRN Licensed Vocational Nurses assigned to Charge/Med-Cart Nurse, Desk/Resource Nurse, and Treatment/Wound Nurse duties who are employed by the Employer at the nursing facility currently located at 430 Willow Street, Alameda, CA 94501.

Excluded: All other licensed nurses including the Director of Nursing, Assistant Director of Nursing, Director of Staff Development, Coordinators, MDS Nurses, Infection Prevention (IP) Nurses, AM Licensed Nurse Supervisors, PM Licensed Nurse Supervisors, and all other employees.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 2015. Because the PRN Licensed Vocational Nurses assigned to Charge/Med-Cart Nurse, Desk/Resource Nurse, and Treatment/Wound Nurse duties are professional employees within the meaning of Section 2(12) of the Act, they will receive ballots as described in *Sonotone Corp.*, above.

A. Election Details

The election will be held on **Thursday, February 19, 2026**, from 6:30 a.m. to 7:30 a.m. and from 2:30 p.m. to 3:30 p.m. at The Employer’s Premises located at 430 Willow Street, Alameda, CA 94501.

B. The Ballots

Two questions shall appear on the ballot of the professional employees (Group A):

1. Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining? The choices on the ballot will be "Yes" or "No".
2. Do you wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 2015? The choices on the ballot will be "Yes" or "No".

The question on the ballot for the non-professional employees (Group B) will be "Do you wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 2015?" The choices on the ballot will be "Yes" or "No".

C. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **January 30, 2026**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

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

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

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names (that employees use at work), work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **February 11, 2026**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

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

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

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to 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.nlrb.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: February 09, 2026



Christy J. Kwon
Regional Director
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