UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

UNITED COMMUNITY ACTION PARTNERSHIP, INC. **Employer/Petitioner** **and** **AFSCME, COUNCIL 65, LOCAL 3444** **Union**	**Case 18-UC-364996**

DECISION AND ORDER CLARIFYING UNIT

On August 15, 1997, the American Federation of State, County and Municipal Employees, Council 65, Local 3444 ("Union") was certified by the Minnesota Bureau of Mediation Services as the exclusive collective-bargaining representative of employees employed by Heartland Community Action Agency, Inc., the predecessor name of United Community Action Partnership ("Employer"), in the following unit ("Unit"):

> Included**:** All regular part-time and regular full-time Employees of United Community Action Partnership, Inc. working principally providing Head Start Program services in a direct service capacity.
>
> Excluded**:** Temporary, substitute, confidential or supervisory employees as defined by the Bureau of Mediation Services.[1]

Almost thirty years later, during the course of bargaining for a successor collective bargaining agreement, the Employer filed the instant petition on April 25, 2025, seeking clarification of the Unit. Specifically, the Employer seeks to exclude Head Start Teachers[2] from the bargaining unit, contending that they are statutory supervisors. The Union maintains Head Start Teachers are not supervisors and, thus, should remain included in the Unit.

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[1] During negotiations, the Union and the Employer subsequently agreed on February 7, 2025, to clarify the exclusions of the bargaining unit to the following language:

> Excluded: Temporary, substitute, supervisory or confidential employees as defined by the National Labor Relations Act.

[2] The Employer stipulated that Early Head Start Teachers are not supervisors.

A hearing was held on November 24 and November 25, 2025, before a hearing officer of the National Labor Relations Board ("Board"). At the outset of the hearing, the hearing officer set forth the burden for proving supervisory status, including the Board's requirement of specific detailed evidence in support of the parties' cases. The parties were then provided with an opportunity to present their positions; call, examine, and cross-examine witnesses; to introduce evidence into the record in support of their contentions; and to orally argue their respective positions at the close of the hearing. As noted above, the sole question before me is whether Head Start Teachers should be excluded from the Unit based on their supervisory status.

I have carefully considered the entire record and the parties' positions in reaching my determination. For the reasons discussed below, I find that the Employer has met its burden to establish that Head Start Teachers are supervisors within Section 2(11) of the National Labor Relations Act ("Act"). Accordingly, I am clarifying the Unit previously certified to exclude the classification of Head Start Teachers.[3]

SUMMARY OF RECORD EVIDENCE

The Employer is a private, non-profit entity that provides community family services and child development education services to qualifying recipients in nine counties located in Southwest and West Central Minnesota. Many of the Employer's employees work in the Head Start program, which provides preschool and child-wellness services to lower income families. The Head Start Program is divided into two separate areas: Early Head Start and Head Start. The Early Head Start portion offers services to pregnant women and infants aged six weeks to two or three months. The Head Start portion offers educational services to children aged three to five years old, preparing them for kindergarten. The Employer is corporately headquartered in Marshall, Minnesota, and the Head Start Program is headquartered in Cosmos, Minnesota.

When fully staffed, the Head Start Program consists of approximately one hundred and fifty employees. The Head Start Program is led by the Director, Mary Lockhart-Findling. Reporting to Director Lockhart-Findling is Operations Manager Becky Shogren. Reporting to

[3] Additionally, I make the following findings:

- The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- The Union is a labor organization within the meaning of Section 2(5) of the Act.
- 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. The parties stipulated to the following commerce facts: The Employer, United Community Action Partnership, Inc., a Minnesota corporation with various offices and places of business located throughout the State of Minnesota, is a community action partnership engaged in the business of providing education services. During the most recent fiscal year ending September 30, 2025, a representative period, the Employer derived gross revenues in excess of $1,000,000. During the same period, the Employer purchased and received at its Minnesota facilities goods and materials valued in excess of $50,000 directly from points located outside the State of Minnesota.

Operations Manager Shogren are four Site Supervisors. The Site Supervisors are the undisputed front-line supervisors for the Head Start Teachers. The Head Start Teachers, in turn, have some authority over the Assistant Teachers and Classroom Support classifications in their classrooms.

Separate from this Head Start operational hierarchy, the Employer also maintains a Human Resources Department. That department is led by Human Resources Director Lacey Lynn De Vos, who reports to Executive Director Debi Brandt. The Head Start Teachers interact with the Human Resources Department for disciplinary and other personnel issues, as described in more detail below.

Each Head Start classroom is typically staffed with three personnel: a Head Start Teacher, an Assistant Teacher, and a Classroom Support. Head Start Teachers are responsible for creating lesson plans for educational instruction and delegating certain responsibilities to Assistant Teachers and Classroom Supports. Assistant Teachers help the Head Start Teachers plan, prepare, and conduct center educational programming. Classroom Supports are responsible for various classroom functions including kitchen and food preparation, and some group educational activities. Within the Head Start Classrooms, Head Start Teachers are considered by the Employer to be the frontline leaders for Assistant Teachers and Classroom Supports. Head Start Teachers assign tasks to their reports, such as leading small group activities, grant time off requests, and can approve overtime hours subject to program funding.

Outside their direct classroom responsibilities, Head Start Teachers also exercise additional authority over Assistant Teachers and Classroom Supports. Head Start Teachers are involved in interviewing prospective job applicants for Assistant Teacher and Classroom Support roles, conducting these interviews alongside the Site Supervisor, and using questions provided by the Employer's Human Resources Department. Head Start Teachers offer verbal coaching to Assistant Teachers and Classroom Supports through informal conversational meetings, referred to in the record as supervisories, alerting employees to deficiencies in their performance and expectations for improvement. Head Start Teachers also have issued verbal or written warnings to Assistant Teachers and Classroom Supports, following the discipline system as defined by the collective bargaining agreement. Head Start Teachers are trained on how to issue discipline, among other topics, by attending mandatory supervisory training administered by the Employer. Head Start Teachers may also receive grievances filed on behalf of Assistant Teachers and Classroom Supports at Step One of the grievance procedure.

As referenced above, on August 15, 1997, the Minnesota Bureau of Mediation Services certified the Union as the exclusive collective bargaining representative of the Unit. Since certification, the Unit has been composed of Early Head Start Teachers, Head Start Teachers, Assistant Teachers, and Classroom Supports.[4] The current collective bargaining agreement became effective on August 1, 2025, and expires on July 31, 2027. At the time of the filing of the

[4] The unit clarification petition filed by the Employer indicates that there were 105 employees in the bargaining unit, and that the Unit, if clarified to exclude Head Start Teachers, would contain 81 employees (suggesting that there were 24 Head Start Teachers in the Unit at that time). The record evidence, however, is otherwise unclear as to the number of Head Start Teachers, Assistant Teachers, and Classroom Supports in the bargaining unit.

instant Petition, the parties' collective bargaining agreement was effective from August 1, 2023, to July 31, 2025.

ANALYSIS

Appropriateness of the Unit Clarification Petition

The Board's express authority under Section 9(c)(1) of the Act to issue certifications carries with it the implied authority to police such certifications and to clarify them as a means of effectuating the policies of the Act. Thus, under Section 102.60(b) of the Board's Rules and Regulations, a party may file a petition for clarification of a bargaining unit where there is a certified or currently recognized bargaining representative and no question concerning representation exists. The Board described the purpose of unit clarification proceedings in *Union Electric Co.*, 217 NLRB 666, 667 (1975):

> Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category—excluded or included—that they occupied in the past.

In addition to the circumstances outlined above, it is well established that the Board allows for unit clarification petitions seeking to exclude a classification based on a statutory exclusion, such as supervisory status. *Goddard Riverside Community Center*, 351 NLRB 1234, 1235 (2007); *Washington Post Co.*, 254 NLRB 168 (1981). This is the case even where the parties have previously stipulated to the placement of now-disputed employees. *Washington Post Co.,* 254 NLRB at 168.

The parties' present disagreement as to the supervisory status of Head Start Teachers is appropriate for review via a unit clarification petition because it involves precisely such a statutory exclusion. As such, I will address whether the Head Start Teachers are supervisors as defined by Section 2(11) of the Act.

Legal Principles Regarding Supervisory Status Under the National Labor Relations Act

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

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

The twelve primary indicia for supervisory status, listed above, are read in the disjunctive, making possession of any one of the indicia sufficient to establish an individual as a supervisor. *Shaw, Inc.*, 350 NLRB 354, 355 (2007). 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 twelve 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, 713 (2001).

The Board's seminal decision in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), further outlines how these statutory principles should be applied. In each case, the Board directs me to carefully analyze the record evidence 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. *See id.* at 690–93. The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. *Id*. at 693; *see also J. C. Brock Corp.*, 314 NLRB 157, 158 (1994). "[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*, 348 NLRB at 692–93. The authority to effectively recommend an action means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed. *See DirecTV U.S.*, 357 NLRB 1747, 1748–49 (2011) (quoting *Children's Farm Home*, 324 NLRB 61, 61 (1997)); see also *Veolia Transportation Services, Inc.*, 363 NLRB 902, 906 (2016) (*Veolia I*); *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998). Testimony that decisions are collaborative is 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, 381–82 (1999)); *see also Veolia Transportation*, 363 NLRB 1879, 1885–86 (2016) (*Veolia II*). Finally, the sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *See Shaw*, 350 NLRB at 357 n.21; *Oakwood*, 348 NLRB at 693.

The Board considers indicia other than those enumerated in Section 2(11) of the Act as secondary indicia. Although secondary indicia may be considered in determining supervisory issues, they are not dispositive and are insufficient to establish supervisory status in the absence of an established primary indicia. *DirecTV*, 357 NLRB at 1750 (citing *Ken-Crest Services*, 335 NLRB 777, 779 (2001)); *see also PowerBack Rehabilitation*, 365 NLRB 1188, 1189 (2017) (citing *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 890 n.4 (2014); *Northcrest Nursing Home*, 313 NLRB 491, 499 (1993)). Secondary indicia include, but are not limited to, an individual's: designation or perception as a supervisor, attendance at supervisory meetings, receipt of management memos, 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 infractions, receipt of privileges exclusive to members of management, and compensation at a rate higher than the employees supervised. Additionally, the Board considers the ratio of putative supervisors to employees as a secondary indicum of

supervisory status. *See Sheraton Universal Hotel*, 350 NLRB 1114, 1118 (2007); *see also Flexi-Van Service Center*, 228 NLRB 956, 960 (1977).

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*, 348 NLRB at 687. On the other hand, however, the Board has cautioned against a results-driven approach, noting that the "starting point must be the language employed in Congress, . . . and we assume that the legislative purpose is expressed by the ordinary meaning of the words used." *Oakwood,* 348 NLRB at 688 (quoting *INS v. Phinpathya,* 464 U.S. 183, 189 (1984)).

In considering the question at hand, it is clear that the burden of establishing supervisory status rests on the party asserting that such status exists. *Kentucky River*, 532 U.S. at 711; *Shaw,* 350 NLRB at 355; *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Croft Metals*, 348 NLRB at 721; *Oakwood*, 348 NLRB at 687. "Purely conclusory evidence does not satisfy that burden, and supervisory status is not proven where the record evidence 'is in conflict or otherwise inconclusive.'" *The Arc of South Norfolk*, 368 NLRB No. 32, slip op. at 3 (2019) (quoting *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989)).

General assertions of supervisory authority, moreover, are insufficient to meet this burden. Rather, the Act "requires … evidence of actual supervisory authority visibly translated into tangible examples demonstrating the existence of such authority." *G4S Regulated Security Solutions*, 362 NLRB 1072, 1073 (2015) (quoting *Oil, Chemical & Atomic Workers v. NLRB*, 445 F.2d 237, 243 (D.C. Cir. 1971), *cert. denied,* 404 U.S. 1039 (1972)); *see also Lynwood Manor*, 350 NLRB 489, 490 (2007); *Golden Crest*, 348 NLRB at 731. The Board looks to evidence of supervisory authority in practice, not simply paper authority; in other words, job titles, job descriptions, or similar documents are not given controlling weight. *Lucky Cab Co.*, 360 NLRB 271, 272 (2014); *Avante at Wilson*, 348 NLRB at 1057. The Board has further emphasized that the evidence must be detailed and specific, particularly with respect to the factors weighed or balanced in exercising putative supervisory authority, in order to establish independent judgment. *See, e.g., Northeast Center for Rehabilitation & Brain Injury*, 372 NLRB No. 35, slip op. at 9–10 (2022); *WSI Savannah River Site*, 363 NLRB 977, 979 (2016); *Pacific Coast M.S. Industries*, 355 NLRB 1422 (2010). Mere inferences or conclusory statements, without detailed specific evidence, are insufficient to establish supervisory authority. *Lynwood Manor*, 350 NLRB at 490; *Golden Crest*, 348 NLRB at 731. Similarly vague or hypothetical testimony fails to establish independent judgment. *See Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153, 1153–54 (2015).

Application of Board Law to the Instant Case

The Employer acknowledges that Head Start Teachers do not possess supervisory authority to transfer, layoff, recall, or promote employees and there is no evidence in the record that would indicate otherwise. Instead, the Employer asserts Head Start Teachers possess the authority in the interest of the Employer to discipline, suspend, discharge, hire, assign, responsibly direct, reward, and adjust grievances for Unit employees, or effectively recommend such action. The Union maintains that Head Start Teachers do not possess any of the

aforementioned authority and thus are statutory employees that should remain included in the Unit.

As explained below, based on the record as a whole, I find the Employer has established that Head Start Teachers possess the authority to discipline employees, utilizing independent judgment, in the interest of the Employer. Although this indicum, standing alone, is sufficient to establish supervisory status, I will also analyze whether Head Start Teachers possess the authority to hire, assign, responsibly direct, reward, adjust grievances, and/or effectively recommend these actions. The record suggests that Teachers possess some authority in each of these areas; none of this evidence, however, rises to the level of specific, concrete evidence required for the Employer to meet its burden as to any of these indicia. Nonetheless, when the Head Start Teacher's authority to discipline is considered in the context of the entire record, including several persuasive secondary indicia, I find the Employer has met its burden in demonstrating that the Head Start Teachers are supervisors within the meaning of Section 2(11) of the Act.

Disciplinary Authority

To establish supervisory status regarding the authority to issue discipline, the discipline issued "must lead to personnel action without independent investigation by upper management." *Veolia I*, 363 NLRB at 908 (citing *Sheraton Universal Hotel*, 350 NLRB 1114, 1116 (2007); *Beverly Health & Rehabilitation Services, Inc.*, 335 NLRB 635, 669 (2001), *enforced in rel. part,* 317 F.3d 316 (D.C. Cir. 2003)). 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*, 348 NLRB at 693.

"Warnings that simply bring the employer's attention to substandard performance without recommendations for future discipline serve a limited reporting function, and do not establish that the disputed individual is exercising disciplinary authority. Similarly, authority to issue verbal reprimands is, without more, too minor a disciplinary function to constitute supervisory authority." *Republican Co.*, 361 NLRB 93, 97 (2014) (citations omitted). Further, "the issuance of written warnings that do not alone affect job status or tenure do not constitute supervisory authority." *DirecTV*, 357 NLRB at 1749. However, verbal and written warnings can constitute disciplinary action where they are retained in an employees' personnel file and form a part of an employer's progressive disciplinary system. *Venture Industries,* 327 NLRB 918, 919 (1999); *Heartland of Beckley,* 328 NLRB 1056, 1056–57 (1999). Where the evidence is in conflict as to whether a particular type of corrective action constitutes discipline, the Board will find that the party asserting supervisory status has not met its burden. *See, e.g.*, *Veolia I*, 363 NLRB at 908, 911 (finding conflicting testimony on whether mere issuance of "observation notice," as well as coaching and counseling, constituted discipline).

The record contains numerous records of documented employee misconduct, including both formal discipline[5] and informal counseling. The lowest, and most common, form of corrective action in the record is referred to as a supervisory. A supervisory is a conversation

[5] The majority of these counseling and disciplines were offered not by the issuing Head Start Teacher, but rather by the custodian of records: Human Resources Director De Vos.

between a purported supervisor and a direct report which alerts the employee to an area of performance that needs improvement or a problem that requires rectification. Head Start Teachers possess the unilateral authority to issue these supervisories to Assistant Teachers and Classroom Supports, and the record indicates that they have regularly done so in the past several years. These supervisories are memorialized in a Supervisory Meeting Checklist and Record form that is provided by the Head Start Teacher to the Human Resources Department of the Employer and is maintained in the employee's personnel file. Human Resources Director De Vos testified that there is no limit to the number of supervisories a Head Start Teacher may initiate prior to issuance of formal discipline, and that this decision is within the discretion of the Head Start Teacher.

The record evidence, however, is insufficient to establish that these supervisories constitute "discipline," as defined under Board precedent interpreting Section 2(11) of the Act. In this regard, it is well-established that mere verbal warnings that do not affect job status or tenure do not rise to the level of discipline. *Republican Co.,* 361 NLRB at 99; *Hausner Hard-Chrome of KY., Inc.,* 326 NLRB 426, 427 (1998); *Ohio Masonic Home,* 295 NLRB 390, 394 (1989). The supervisories in this case seem to clearly fit within this type of non-disciplinary verbal reprimand. Indeed, the parties' collective bargaining agreement specifically defines "disciplinary action" as only "includ[ing]: 1) Verbal Warning; 2) Written Warning; 3) Probation of up to six work weeks; 4) Demotion; 5) Suspension Without Pay; or 6) Discharge." Further, several employer witnesses confirmed that supervisories were distinct from formal disciplinary action. While there is some evidence that a supervisory can serve a precursor to the employer's formal disciplinary procedures,[6] there is no evidence that a supervisory is *required* to invoke formal disciplinary procedures, nor that a certain number of supervisories *necessitates* that formal discipline be issued. Therefore, this evidence is insufficient to establish that supervisories constitute discipline as understood under the Act.

Nonetheless, while supervisories do not themselves constitute discipline as understood under the Act, they are relevant in establishing that Head Start Teachers utilize independent judgment in exercising their disciplinary authority. In this regard, teachers possess the independent authority to determine whether a staff performance issue warrants an informal discussion, a documented supervisory, or more formal discipline. There are no firm guidelines provided to teachers that dictate whether misconduct rises to the level of formal discipline; that discretion is left solely to the judgment of the individual teacher. Such discretion, unbounded by any formal guidelines, clearly indicates the use of independent judgment. *E.g., Metropolitan Transportation Servs., Inc.,* 357 NLRB 657, 661 (2007) (finding disciplinary authority where

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[6] For example, Head Start Teacher SGH testified that on September 12, 2025, she issued a supervisory to Classroom Support JH for attendance issues and failing to inform Head Start Teacher SGH of her absence. Subsequently, Head Start Teacher SGH issued a verbal warning to Classroom Support JH for attendance and punctuality on September 16, 2025. SGH testified that she decided to issue this verbal warning, a form of discipline identified by the parties' collective bargaining relationship. SGH further testified that on September 26, 2025, she issued a written warning, the next tier of formal discipline, to JH for timeliness, and that the decision to issue the written warning was her own. SGH subsequently informed Director Lockhart-Findling via email that the written warning appeared to resolve most of the issues she witnessed with JH.

individual possessed "authority [that] included the power to select among a variety of disciplinary options[.]")

The record is equally clear that teachers also possess the authority to issue formal discipline, such as verbal and written warnings. While the record contains fewer instances of teachers issuing formal discipline than there are of teachers issuing supervisories, such documentary evidence of specific instances of discipline issued by teachers does exist. Further, Human Resources Director De Vos testified, without contradiction, that a Head Start Teacher may initiate a supervisory, a verbal warning, a written warning, or a performance improvement plan to address performance issues with Assistant Teachers or Classroom Supports, and that the extent of discipline to issue is left to the discretion of the Head Start Teacher.[7] The authority of Head Start Teachers to unilaterally determine employee violations of the work rules and policies, to determine which level of rule violation is involved, and to unilaterally prepare either a supervisory, a verbal, or a written warning to the employee, is indicative of supervisory authority, particularly where the warning is placed in the offending employee's personnel file without further investigation or review by higher supervisory authority. *Heartland of Beckley*, 328 NLRB at 1056–57; *Wedgewood Health Care*, 267 NLRB 525, 526 (1983). Accordingly, I find the record establishes that Head Start Teachers possess the authority to discipline, utilizing independent judgment, within the meaning of Section 2(11) of the Act.[8]

Hiring

As with all primary supervisory indicia, a hiring recommendation is not effective in the absence of a contention or finding that such recommendation is relied on without further inquiries. *Peacock Productions of NBC Universal Media*, 364 NLRB 1523, 1526 (2016) (citing *Republican Co.*, 361 NLRB at 97); *see also Adco Electric*, 307 NLRB 1113, 1124 (1992), *enforced*, 6 F.3d 1110 (5th Cir. 1993). Likewise, a hiring recommendation has not been shown to be effective where the influence of the recommendation on the ultimate decision is not known. *Pacific Coast M.S. Industries*, 355 NLRB at 1425–26. Merely narrowing the applicant pool by screening applicants and recommending several to the ultimate decisionmaker does not constitute an effective hiring recommendation. *J.C. Penney Corp., Inc.*, 347 NLRB 127, 129 (2006) (citing *The Door*, 297 NLRB 601, 602 (1990); *Bowne of Houston*, 280 NLRB 1222, 1223 (1986)). However, effectively recommending against hiring a candidate can establish supervisory authority. *Sheraton Universal Hotel*, 350 NLRB at 1118 (finding recommendation effective

[7] Although Human Resources Director De Vos also indicated that Head Start Teachers have the authority to suspend employees, the record is devoid of any specific, concrete evidence of teachers ever doing so. Accordingly, I place little, if any, weight on this testimony.

[8] The Employer further asserts that Head Start Teachers can suspend employees and discharge employees, or at least effectively recommend such actions. The record does not contain specific, concrete evidence to support these assertions. There is no documentary evidence of teachers issuing terminations or suspensions. Further, while employer representatives vaguely claimed that MV, a Head Start Teacher, terminated an employee, this evidence was contradicted by the testimony of MV and the Employer's own documents. Accordingly, I do not find that the Employer has met its burden on this front.

where superior unequivocally testified he would not hire an applicant if alleged supervisor recommended against it).[9]

The Employer argues Head Start Teachers possess the authority to effectively recommend candidates for hire and, according to Director Mary Lockhart-Findling, that their recommendation is the primary basis for hiring decisions. The evidence demonstrates that Head Start Teachers or Site Supervisors notify the Human Resources Department of a potential vacancy by submitting an authorization to fill form. The Human Resources Department then provides a two-person panel, typically consisting of a Site Supervisor and a Head Start Teacher, with the application materials of potential interviewees, and the Site Supervisor and Head Start Teacher score these applications using a prepared form. After the applications are scored, these individuals decide which applicants to interview.[10] In making this decision, the Teacher and Site Supervisor are not required to interview all applicants, nor are they required to interview applicants who score above a certain level on the Employer's application form.

The Site Supervisor and the Head Start Teacher then conduct interviews using a Human Resources Department-prepared list of interview questions. One Head Start Teacher, RL, testified that after the completion of the interview process, she meets and confers with her Site Supervisor, reviewing who they believe is the best candidate, and that it is ultimately RL's decision as to which candidate will receive an offer employment, based upon qualifications and experience. However, RL further testified to an instance where her recommendation was overruled by the Site Supervisor, because another applicant held seniority and was already working for the Employer. Another Head Start Teacher, JK, testified that she participated in the interview process, and would discuss the interviewee's answers to questions with the Site Supervisor, but that the decision on hiring was left to the Site Supervisor. The record contains no documentary or other evidence to establish or even suggest a Head Start Teacher has hired or recommended for hire other employees without acknowledged supervisors, specifically Site Supervisors, also being present in the interview and making a recommendation. Absent additional evidence, which is not present here, an individual does not possess the authority to hire, or effectively recommend hiring, where an acknowledged supervisor also interviews the candidate and is involved in the hiring decision (in this case, the Site Supervisors). See, e.*g., Ryder Truck Rental,* 326 NLRB 1386, 1387 n.9, 1388 (1998); *Waverly-Cedar Falls Health Care,* 297 NLRB 390, 392 (1989), *enforced,* 933 F.2d 626 (8th Cir. 1991). Based on the entire record and established Board principles, I conclude the Employer has not sustained its burden to show

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[9] *See, e.g., Berger Transfer & Storage*, 253 NLRB 5, 10 (1980), *enforced,* 678 F.2d 679 (7th Cir. 1982), *supplemented by* 281 NLRB 1157 (1986) (finding recommendation effective where, despite putative supervisor's recommendation to hire being followed by further interviews, a recommendation *against* hiring was normally final); *HS Lordships*, 274 NLRB 1167, 1173 (1985) (finding recommendation effective where bar manager's recommendations against hiring were followed).

[10] The record evidence, however, also indicates that Head Start Teachers are not always involved in selecting candidates to interview, and that at times these candidates are selected solely by the Site Supervisor.

Head Start Teachers have the authority to hire, or to effectively recommend for hire, within the meaning of Section 2(11) of the Act.

Assignment and Responsible Direction

The Board defines "assign" as "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*, 348 NLRB at 689. The Board elaborated further that "assignment of an employee to a certain department (e.g., housewares) or to a certain shift (e.g., night) or to certain significant overall tasks (e.g., restocking shelves) would generally qualify as 'assign.' However, choosing the order in which the employee will perform discrete tasks within those assignments (e.g., restocking toasters before coffeemakers) would not be indicative of the authority to 'assign.'" *Id*.

The Board finds authority to "direct" when it is shown that the employer has delegated to the putative supervisor the authority to direct the work—that is, to determine what tasks are done or by whom—and the authority to take corrective action, if necessary. See *Oakwood*, 348 NLRB at 691, 692. The threshold for establishing corrective action under responsible direction is lower than the threshold for the other indicia. See *Community Education Centers, Inc.*, 360 NLRB 85, 85 (2014) (citing *CGLM, Inc.*, 350 NLRB 974, 974 n.2, 983–84 (2007), *enforced mem.*, 280 Fed. App'x 366 (5th Cir. 2008); *Croft Metals*, 348 NLRB at 722 n.13). Importantly, and unlike assignments, the purported supervisor must also be held accountable for the performance of the task they direct in order to "responsibly direct." *Oakwood*, 348 NLRB at 692. As such, the ability to take corrective action without supporting evidence of accountability does not confer supervisory status. *Community Education Centers*, 360 NLRB at 85. Accountability may be shown by either negative or positive consequences to the putative supervisor's terms and conditions of employment as a result of the alleged subordinates' directed actions. *Golden Crest*, 348 NLRB at 731; *see also Peacock Productions of NBC Universal Media, LLC*, 364 NLRB 1523, 1526 (2016). Finally, the Board has cautioned that "responsibly to direct" does not include "minor supervisory functions performed by lead employees, straw bosses, and setup men." *Oakwood*, 348 NLRB at 690.

Both assignments and responsible direction must be based on independent judgment to confer supervisory status, and making assignments based on employees' well-known skills does not involve independent judgment. *CNN America, Inc.*, 361 NLRB 439, 460 (2014) (citing *KGW-TV*, 329 NLRB 378, 378, 381–82 (1999), *enforced in rel. part*, 865 F.3d 740 (D.C. Cir. 2017)); *see also S.D.I. Operating Partners, L.P.*, 321 NLRB 111 (1996). Making an assignment merely because the employee is capable of performing the job does not involve independent judgment. See *WSI Savannah River Site*, 363 NLRB at 979 (citing *Volair Contractors, Inc.*, 341 NLRB 673, 675 n.10 (2004)); *Cook Inlet Tug & Barge, Inc.*, 362 NLRB at 1154 (citing *Croft Metals*, 348 NLRB at 722). Similarly, assignment of work duties based on employee preferences or seniority does not reflect the use of independent judgment. *Springfield Terrace Limited*, 355 NLRB 937, 942 (2010). Independent judgment is likewise not established by the assignment of recurrent and predictable tasks. *Shaw, Inc.*, 350 NLRB at 355–56; *Croft Metals*, 348 NLRB at 721 n.14 (citing *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002); *Bowne of Houston*, 280 NLRB 1222, 1223 (1986)). Assignments in a merely routine, clerical, or perfunctory manner

where there is only one self-evident choice also do not require independent judgment under established Board precedent. *Oakwood*, 348 NLRB at 693.

The record evidence here is insufficient to establish that Head Start Teachers possess the authority to assign work utilizing independent judgment. Although the evidence clearly demonstrates that Head Start Teachers assign small group activities to both Assistant Teachers and Classroom Supports, it fails to demonstrate that this assignment is based upon independent judgment. Rather, this assignment is seemingly based upon only a single, self-evident choice. For example, Head Start Teacher MV testified that she is unable to conduct three small groups, so if she did not assign this task to the Assistant Teacher and Classroom Support, there would be no other personnel to perform the small group activities. Furthermore, the testimony of Head Start Teacher SGH demonstrated that she instructed an Assistant Teacher to sign-up for duties related to the bus schedule. However, SGH also testified that this requirement was an essential portion of the Assistant Teacher's job functions, and thus it is unclear that this assignment exceeded a routine or clerical function. Accordingly, I find the limited record evidence fails to show Head Start Teachers have authority to assign other employees, using independent judgment, within the meaning of Section 2(11) of the Act.

Relatedly, there is no evidence indicating Head Start Teachers dictate precisely how the Assistant Teachers and Classroom Supports perform their work or that they are held responsible for the employees' job performance. The record contained several examples where a Head Start Teacher informed a direct report that their performance required improvement. However, there was no evidence indicating what, if anything, might have been the consequence to the Head Start Teacher in the event that such improvement was not actualized by an Assistant Teacher or Classroom Support. In other words, while the record establishes that Head Start Teachers direct others in their classroom in some form or fashion, the record does not establish that they are held responsible in any way for such direction. Accordingly, I find the record fails to establish Head Start Teachers have authority to responsibly direct other employees, using independent judgment, within the meaning of Section 2(11) of the Act.

Rewarding

The Board will find the authority to reward where alleged supervisors use independent judgment to substantially impact the earnings of other employees, for example, by granting merit increases or awarding bonuses. It has also found the granting of time off as a result of good performance to constitute a reward. *Newspaper Guild, Local 47 (Pulitzer Publishing)*, 272 NLRB 1195, 1200 (1984); *Taylor-O-Brien Corp.*, 112 NLRB 1, 12–13 (1955). More commonly, the Board analyzes whether a putative supervisor effectively recommends rewarding employees by virtue of evaluating their performance, and whether the evaluation, by itself, directly affects other employees' job status. *See, e.g., Wal-Mart Stores*, 335 NLRB 1310 (2001); *Trevilla of Golden Valley*, 330 NLRB 1377 (2000); *Bayou Manor Health Center*, 311 NLRB 955 (1993); *Pine Manor Nursing Center*, 270 NLRB 1008, 1009 (1984).

Here, the record contains insufficient evidence that Head Start Teachers possess the authority to reward other employees. The teachers are not involved in employee wage increases, bonuses, or performance appraisals that affect employee compensation. While the record demonstrated that Head Start Teachers complete Employee Job Performance Evaluation Forms

for Assistant Teachers and Classroom Supports, both Human Resources Director De Vos and Head Start Teacher MV confirmed that these performance evaluations, per the terms of the most recent collective bargaining agreement, do not have any impact on merit increases for evaluated unit employees or otherwise lead to economic benefits. Further, while there is ample evidence in the record to establish that Head Start Teachers grant requests for paid time off by Assistant Teachers and Classroom Supports, there is no evidence to suggest that such decisions are based on good performance. Accordingly, I find the evidence fails to show Head Start Teachers possess the authority to reward or effectively recommend reward, using independent judgment, within the meaning of Section 2(11) of the Act.

Adjustment of Employee Grievances

To establish supervisory status based on the ability to adjust employee grievances, alleged supervisors must have the authority to resolve workplace complaints beyond minor disputes, again using independent judgment. *See Ken-Crest Services*, 335 NLRB 777, 778–79 (2001); *see also Riverchase Health Care Center*, 304 NLRB 861, 865 (1991). Responding to informal complaints regarding workloads, break schedules, and personality conflicts amongst employees is not sufficient to establish the authority to adjust grievances. *Riverchase*, 304 NLRB at 865. It is likewise insufficient to show the putative supervisor simply has some involvement in the grievance procedure. Rather, a party must present evidence demonstrating the role the purported supervisor plays in the procedure and that they independently adjust employee grievances. *Training School at Vineland*, 332 NLRB 1412, 1412 n.2 (2000).

There was no evidence in the record showing Head Start Teachers use independent judgment to adjust employee grievances. The record established that Head Start Teachers have served as the point of contact in an administrative capacity for the filing of Step One grievances filed on behalf of the Assistant Teachers and Classroom Supports. There is, however, no evidence to suggest that Head Start Teachers have the authority to adjust grievances, let alone the ability to do so utilizing independent judgment. The record also demonstrated that one Head Start Teacher, MV, served as a witness for the Employer during a Step Four grievance meeting in front of the Employer's Board of Directors. The evidence failed to demonstrate that MV was involved in the ultimate disposition of this grievance, or the formulation of the Employer's response to the grievance; rather, it appears that MV served as a fact witness (a role that could be served by anyone in the Employer's employ, including any other bargaining unit employee). Accordingly, I find the record insufficient to establish Head Start Teachers possess the authority to adjust grievances or recommend such action, using independent judgment, within the meaning of Section 2(11) of the Act.

Secondary Indicia of Supervisory Authority

The Board considers indicia other than those enumerated in Section 2(11) of the Act as secondary indicia. Although secondary indicia may be considered in determining supervisory issues, they are not dispositive and are insufficient to establish supervisory status in the absence of an established primary indicia. *St. Francis Medical Center-West*, 323 NLRB 1046 (1997). Secondary indicia include, but are not limited to, an individual's: designation as a supervisor, attendance at supervisory meetings, receipt of management memos, 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 infractions, receipt of privileges exclusive to members of management, and compensation at a rate higher than the employees supervised. *See Sheraton Universal Hotel*, 350 NLRB 1114, 1118 (2007); *Flexi-Van Service Center*, 228 NLRB 956, 960 (1977).

In the instant case, several secondary indicia support my finding that Head Start Teachers are supervisors within the meaning of Section 2(11) of the Act. First, the Employer has designated the Head Start Teachers as supervisors in their classrooms. This is demonstrated by, *inter alia,* grievance forms, performance evaluations, supervisories, and disciplinary records. Indeed, although not dispositive, the record indicates that Head Start Teachers generally (though not always) are the highest authority in their classrooms. Second, the Head Start Teachers participate in supervisory training programs. Head Start Teacher MV testified that she was in attendance for the Employer's mandatory supervisory training conducted on August 23, 2024 and November 21, 2024. And third, Head Start Teachers approve the time off requests of Assistant Teachers and Classroom Supports. Head Start Teachers MV and RL testified that Assistant Teachers and Classroom Supports request paid time off from them and that they are responsible for approving timesheets. Therefore, evidence of aforementioned secondary indicia support the finding that Head Start Teachers are supervisors within the meaning of Section 2(11) of the Act.

CONCLUSION

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this matter and in accordance with the discussion above, the Employer has met its burden and established that Head Start Teachers are supervisors within the meaning of Section 2(11) of the Act. Specifically, Head Start Teachers have 2(11) authority, in the interest of the Employer, to discipline using independent judgement. Accordingly, I am clarifying the Unit to exclude Head Start Teachers and conclude and find as follows:

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

1. 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.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is the exclusive collective-bargaining representative of the following unit, which is an appropriate unit within the meaning of Section 9(b) of the Act:

> **Included:** All full-time and regular part-time Employees of United Community Action Partnership, Inc. working principally providing Head Start Program services in a direct service capacity.
>
> **Excluded:** Temporary, substitute, confidential or supervisory employees, including Head Start Teachers, as defined by the National Labor Relations Act.

4. The classification of Head Start Teacher is a statutory supervisor and the bargaining unit represented by Union shall be clarified as ordered below.

ORDER

IT IS HEREBY ORDERED that the bargaining unit referenced in Case 18-UC-364996 is clarified as follows:

> **Included:** All full-time and regular part-time employees of the Employer working principally providing Head Start Program services in a direct service capacity.
>
> **Excluded:** All office clerical employees, confidential employees, temporary employees, and substitute employees, and supervisors, including Head Start Teachers, as defined by the National Labor Relations Act.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the E-Filing System User Guide.

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time) on February 10, 2026**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on February 10, 2026.**

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: January 27, 2026

/s/ Jennifer A. Hadsall

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