UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25

LUTHERAN HOME FOR THE AGED ASSOCIATION – EAST d/b/a DAVENPORT LUTHERAN HOME

Employer

and

Case 25-RC-379991

UNITED FOOD & COMMERCIAL WORKERS LOCAL 431

Petitioner

DECISION AND DIRECTION OF ELECTION

On January 28, 2026, United Food & Commercial Workers Local 431 ("Petitioner") filed a representation petition under Section 9(c) of the National Labor Relations Act ("Act") seeking to represent certain employees employed by Lutheran Home for the Aged Association - East d/b/a Davenport Lutheran Home ("Employer") out of its nursing home/long-term care facility located in Davenport, Iowa. Specifically, Petitioner seeks a unit of all full-time and regular part-time Registered Nurses ("RNs") and Licensed Practical Nurses ("LPNs") employed at the Employer's Davenport facility. The Employer refers to the petitioned-for RNs and LPNs collectively as "nurses" and, for consistency and clarity, I will do the same throughout this Decision.[1] There are approximately 19 employees in the petitioned-for unit.

A hearing was held on February 17 and 18, 2026, before a hearing officer of the National Labor Relations Board ("Board"). The Employer asserts the RNs and LPNs cannot constitute an appropriate unit, either collectively or separately from each other, because they are statutory supervisors under the Act while Petitioner maintains nurses do not possess any of the primary indicia required for a supervisory finding. Specifically, the Employer contends nurses possess the authority in the interest of the Employer to transfer, suspend, assign, reward, discipline, responsibly direct, and adjust the grievances of other employees, including Certified Medication Assistants ("CMA") and Certified Nursing Assistants ("CNA"). The Employer also asserts nurses can effectively recommend that other employees be discharged or promoted. Petitioner maintains the Employer has failed to carry its burden of establishing nurses are supervisors under the Act, noting the record evidence is conflicting at best and the nurses operate in a highly regulated environment such that any "supervisory" actions they take are done consistent with state law, the scope of their practice, and Employer regulation so do not demonstrate the exercise of independent judgment.

---

[1] In the record, RNs and LPNs are also occasionally referred to as charge nurses or floor nurses. At other points, the entire nursing staff (including RNs, LPNs, certified medication assistants, and certified nursing assistants) are sometimes referred to generally as nurses. Recognizing that the petitioned-for unit of RNs and LPNs are a different grouping of nursing staff as utilized at the Employer's facility, I am referring to the two petitioned-for classifications collectively as "nurses" and will refer to the other classifications specifically by their job title where necessary.

At the outset of the hearing, the hearing officer set forth the burden for proving supervisory status, including the Board's standard of specific detailed evidence, and then the parties were provided with an opportunity to present their positions, call, examine, and cross-examine witnesses, to introduce into the record evidence of the significant facts that support their contentions, and to orally argue their respective positions.[2]

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 proceeding and relevant Board law, I find that the Employer failed to meet its burden of showing nurses are statutory supervisors by specific detailed uncontroverted evidence. Accordingly, I am ordering an election in the petitioned-for unit.[3]

I. THE EMPLOYER'S OPERATIONS

The Employer provides residential skilled nursing care at a nursing home/long-term care facility in Davenport, Iowa. The facility consists of an intermediate care unit ("ICU") and a memory care unit ("MCU").[4] Although licensed for up to 98 beds, the facility typically operates at around 78 to 80 occupied beds; 26 of those beds are in the MCU with the remainder in the ICU. At the time of the hearing, the Employer had approximately 129 total personnel, including managers, administrators, and the 19 nurses at issue in this proceeding.

Karen Wilson is the Administrator for the Employer and is the highest official at the facility. She has oversight of the Dietary, Laundry/Housekeeping, and Nursing Departments. Ami McReynolds is the Director of Nursing ("DON"), Marian Grandberry is the Assistant Director of Nursing ("ADON"),[5] and both are responsible for overseeing nursing activities at the facility, including the petitioned-for nurses and other nursing staff such as the CMAs and CNAs. Jessica Wills, an RN, is currently serving as the interim Memory Care Manager; there is no corresponding manager for the ICU. Karla Denney is the Office Manager who oversees the CNA schedule and Meechicko McNeal is the Staffing Coordinator responsible for the nurses' schedule. Generally, the Employer's managers and administration work a Monday through Friday dayshift schedule, while nursing must be staffed 24/7.[6] Afterhours, especially overnight

---

[2] It is worth noting that despite the hearing officer reminding the parties of the need to hear direct evidence from the witnesses and multiple subsequent admonitions, a not insignificant amount of evidence presented in the record was the result of leading questions. In other instances, documents were introduced into evidence without authentication or a witness being able to testify about the underlying facts referred to in the exhibit. I have noted herein a few of the specific instances where that lack of direct evidence impacted the quality of the evidence presented.

[3] As stipulated by the parties, the RNs and LPNs are appropriately included in a single bargaining unit if they are not statutory supervisors.

[4] The facility also includes an attached assisted living facility. However, the record does not establish that any of the nurses in the petitioned-for unit are involved in providing care in the assisted living portion of the facility.

[5] The transcript in several places contains references to the "DLN" or "ADLN." I understand those to be inadvertent error with the speaker clearly meaning "DON" and "ADON."

[6] The designated shifts are: 6:00 a.m. until 2:30 p.m., 2:00 p.m. until 10:30 p.m., and 10:00 p.m. until 6:30 a.m. However, the nurses typically prefer to work in 12-hour shifts of 6:00 a.m. until 6:00 p.m. and 6:00 p.m. until 6:00 a.m. Managers and administration generally work onsite from 8:00 a.m. until 4:30 p.m.

on third shift, a nurse is the highest authority physically onsite at the facility. There is always an On-Call Manager (designated on a rotating basis) to handle after-hours matters.

A. "Nonprofessional" Employees

The majority of employees at the Employer's facility, including CMAs, CNAs, dietary aides, and others, are already represented by Petitioner in an existing bargaining unit and are covered by a collective-bargaining agreement in effect from December 1, 2023, through December 1, 2028 ("Nonprofessional CBA").[7] The Nonprofessional CBA controls many of the terms and conditions of employment for these employees, including wages (including shift, seniority, and longevity/retirement bonuses), hours of work (including for critical staffing levels, overtime, and low census periods), and a grievance procedure. The Employer also maintains a collection of "Policies and Procedures" akin to an employee handbook that covers a broad range of topics. Many of the policies apply to unionized and nonunionized employees equally while some policies apply specifically to unionized employees and others have carveouts due to the Nonprofessional CBA.

B. The Petitioned for Nurses (RNs and LPNs)

Although they have separate state licensing requirements and perhaps slightly different scopes of practice, the Employer treats RNs and LPNs as a singular job classification of Nurse.[8] The Nurse job description indicates that the "overall purpose of the RN and LPN is to provide and supervise the overall care for the residents of the facilities." Among the educational and professional qualifications, it is noted that LPNs must complete a "supervisory course" mandated by the State of Iowa for LPNs who are working in a supervisory role in a long-term care facility. The job description lists a litany of duties the nurses are expected to perform to achieve the overarching goal of providing patient care.[9]

1. Assign and Transfer

The Employer uses Office Manager Denney and Staffing Coordinator McNeal to oversee scheduling at the facility. Denney oversees the assignments for the CNAs and McNeal prepares the schedule for the nurses. McNeal then prepares a daily Assignment Sheet that covers the ICU and MCU and specifies which nurses and CNAs or other staff are assigned to which area of the facility and for which shift that day. The daily schedule also lists the "Scheduler On Call Scheduling Purposes Only," which, at least for the two schedules introduced into the record,[10]

---

[7] I take administrative notice of the Certification of Representative in Case 38-RC-1426, which issued on Oct. 26, 1973, and is referenced in the Nonprofessional CBA.

[8] The parties stipulated that the RNs and LPNs as utilized at the Employer's facility both constitute professional employees as defined in Section 2(12) of the Act.

[9] The record does not include the job descriptions for CMAs or CNAs other than a general reference to "See Union Contract" to indicate to what degree those classifications are expected to report to and interact with the nurses; nor were the job descriptions for the DON or ADON introduced into evidence to demonstrate to how much they oversee the work of subordinate nursing staff, including CMAs and CNAs.

[10] The Employer introduced two daily schedules, Employer exhs. 12 and 18; However, both appear identical, including the same date. Petitioner exh. 2 is a different daily schedule.

was McNeal. Besides providing the shift and location assignments, the daily schedule also states: "Please Do Not Change Or Move Anyone From The Assigned Scheduled Area Or Adjust Anyone Shift Unless There Is A Call Off." Under the Nonprofessional CBA, work schedules must be posted on a weekly basis and "posted schedules will not be changed without agreement of both the employee and the Home." The contract explicitly defines the three 8-hour shifts to which employees can be assigned and also recognizes the Employer's right to schedule additional hours as needed. The Employer's Hours of Work policy states that Department Heads will schedule employees for any hour changes that may arise.

When there is a call off or an employee fails to report to work, the nurse working in that area reviews the prepared daily schedule to see how many CNAs have already been assigned. Assuming there is sufficient staffing, the nurse will then request that one of the scheduled CNAs work in a different area to cover for the missing employee. As DON McReynolds noted, most shifts include a Restorative Aide or a Bath/Shower Aide and that is who the nurse typically looks at first to cover for a missing CNA.[11] A 3½-year nurse testified that having to move people around to cover gaps in coverage is part of his routine, something nurses do regularly. The reason CNAs would need to be moved around to cover for a call off is to comply with state regulations and Employer policies dictating necessary coverage based on resident census.

If a nurse is not able to properly staff the facility with available employees from the daily schedule, the nurse can request employees from the prior shift stay over to work some overtime. In other instances, the nurse might call employees who are off-work to see if they want to come in to cover the shift. In those circumstances, the nurse's decision is largely dictated by employee seniority and the Nonprofessional CBA. For example, Section 18 of the contract specifies that any overtime work is supposed to be offered as equally as possible. The 3½-year nurse testified that there is a seniority list maintained with the daily schedule that can be used for determining who should be offered overtime opportunities first. A 4-month nurse testified that she does not call employees into work directly without first contacting McNeil to find out which CNA should be called.

Although only minimal specifics were given, there are a few other general circumstances when a nurse may need to change a CNA's assignment from the daily schedule. For example, the 3½-year nurse testified that he will sometimes have to take a resident's medical condition into consideration and maybe move a more experienced CNA to replace a less experienced one to take care of the patient. If two employees are not getting along for some reason, a nurse can move a CNA to a different area of the facility to avoid a conflict between the two. Administrator Wilson also noted there are occasions where the family of a resident may request care from a particular CNA or that a certain CNA not care for the resident. In those circumstances, a manager might ask a nurse to swap a couple CNAs to accommodate the request. The Employer's Weather policy notes: "Supervisors should always confer with the Department Head and/or the Administrator, or in his/her absence, the highest-raking staff member of the facility before allowing early departure of their employees because of threatening weather or granting time off for weather induced absence."

---

[11] As McReynolds testified, "The Restorative Aides pretty much already know that they're the first ones pulled in our staffing pattern" (Tr. 333).

As for assignment of duties, the Nurse job description indicates that they shall assign duties to CNAs and other staff as needed. The 3½-year nurse provided an example of assigning duties to include asking a CNA to get ice for a resident or provide them with a food tray. Interim Manager Wills noted that some residents have to be weighed every day, so the nurse assigns a CNA to ensure that it happens. Ultimately, the nurses and CNAs are performing their duties for the benefit of the residents and each job classification is controlled by the scope of their practice. As DON McReynolds testified, assignments nurses give to CNAs are based on patient care requirements, customer service, and the scope of the employee's practice (Tr. 390).

The other area of assignment that comes up involving the nurses is when CNAs can take their breaks. Normally, CNA breaks are prescheduled and do not require involvement from the nurses. However, if situations come up and an employee needs to extend a break or change their break time, the nurse can get involved in approving that. As the 3-½ year nurse testified, dealing with CNA breaks is one of those "daily average things that we do on a day to day" (Tr. 40).

2. Discipline, Suspend, Discharge

The Nonprofessional CBA contains an article on employee conduct and discipline. That provision identifies the type of conduct for which disciplinary action "shall be deemed necessary," including exhibiting an attitude or actions detrimental to the safety, health, or welfare of patients and others and losing interest in the job and the quality of work expected of the position. The contract specifies that employees can be issued one of three types of discipline: an oral warning (for which the employee must be given an opportunity to sign the documentation of the warning before it is placed in their personnel file), a written warning, or immediate dismissal. The record indicates the Employer may have recently also implemented suspension as a fourth type of discipline that can be issued. Although the contract itself does not refer to the disciplinary procedure as progressive, the Employer's Discipline policy and other Employer policies refer to a progressive disciplinary system.[12]

There are three different disciplinary forms used by the Employer (two of which are variations of the same basic form): a Counseling Session form, a Progressive Discipline form with three levels of discipline (verbal counseling verification, written verification, and termination verification), and a Progressive Discipline form with four levels of discipline (verbal counseling, written verification, suspension, and termination verification).[13] The 3-step progressive discipline form is older with the 4-step form being revised in January 2018 to add the

---

[12] For example, the Nurse job description and New Employee Worksheet, Visitors policy, and Injury and Employee Incident Report Workmen's Compensation Early Return to Work Program.

[13] The Employer's Policies and Procedures on Discipline note that when performance or conduct infractions are observed, they should be documented on the Record of Policy Violation Form. That form, in turn, notes that a "Department head will address concern/s with employee" and will handle "appropriate disciplinary action as necessary." However, no completed record of policy violation forms were introduced into evidence.

Under its Policies and Procedures, the Employer maintains Performance and Conduct Rules. The rules in the record were implemented on January 1, 1996, revised April 1, 2024, and reviewed on August 12, 2025. The rules specifically state "the normal discipline procedure is a 3 step process" but also provides for behaviors that "may result in immediate dismissal without any prior warning if deemed by administration to be of a serious nature." The 3 steps appear to correspond to the Discipline policy, which outlines the following steps: Verbal Counseling (oral warning), Written Warning, and Discharge. See Employer exh. 10 and Petitioner Exh. 1.

suspension level. Both the 3-step and 4-step progressive discipline forms are still in use and the 3½-year nurse indicated he had never used the 4-step form. The record reflects six times (two are for the same incident) when the Counseling Session form was used and three instances when a version of the Progressive Discipline form was used. The 3½-year nurse considers the Counseling Session form to be the equivalent of a verbal warning—the first step in the disciplinary procedure—while the 4-month nurse understands the form to be a reporting mechanism—a means to notify management (DON or ADON) of a situation so that management can determine whether discipline is necessary. DON McReynolds stated that the Counseling Session form is the lowest form of discipline and Interim Manager Wills indicated that a counseling is a step prior a verbal warning. The Nurse Orientation List, which is part of the Nurse job description, states "Discipline process-verbal co[u]nseling vs progressive discipline." Once a nurse completes a Counseling Session form, it is passed on to the DON or ADON for their review and possible placement in the affected employee's personnel file. A Counseling Session form may be completed and turned in without the knowledge of the subject employee.

The completed Counseling Session forms introduced into the record document an employee who took over an hour lunch; an employee who left work without handing off to incoming staff, failed to report output for a resident's catheter, and left trash and dinner trays in residents' rooms; an employee who was wearing ear buds; an employee who purportedly took a lunch break without being scheduled to and without notifying a nurse; and a CNA who refused to clean vomit off a patient.[14] The completed Progressive Discipline forms reflect a nurse who did not ensure that a CNA completed their charting (verbal counseling) or that CNAs were in uniform (written verification); an aide who was suspended for insubordination; and a CNA who was issued a verbal counseling for not completing appointed tasks, including emptying trash bins and changing a resident's clothes when they were saturated in urine.

There is also some testimony of a couple circumstances, whether fully documented or not, where a nurse sent an employee home because they were not providing proper care or were being disrespectful to their coworkers or residents. In those instances, the nurse sent the employee home, reported the incident to management, and then management later concluded the conduct was worthy of termination and the employee in question was subsequently discharged. However, the 4-month nurse, who previously worked as a CNA for the Employer, testified that she was unaware of a nurse ever suspending an employee.

DON McReynolds testified that that nurses do not have the authority to discharge employees. Administrator Wilson concurred that any discipline nurses could perform stopped short of termination. McReynolds noted that, at least on the nursing side, she decides on termination because it must comply with the Nonprofessional CBA. Also, nurses do not have access to personnel files and McReynolds needs to review an employee's file before deciding whether discharge is appropriate. She did, however, indicate that nurses could make a recommendation to her that an employee should be terminated while Wilson indicated that only the administration can terminate employees because they need to investigate and document before a decision can be made. In one example of a CNA who was terminated, McReynolds

[14] While Employer exh. 6 was admitted into evidence without authentication, it does appear to be a business record kept in the ordinary course of business. No witness was presented that had firsthand knowledge of the underlying situations involved in the Counseling Session forms reflected in that exhibit.

testified she considered one of the nurse's recommendations but also noted the CNA in question blatantly refused to perform patient care so "there's really not much to do with someone who's refusing to perform tasks that need to be done" (Tr. 611).

3. Promote

The parties stipulated that nurses do not have the independent authority to promote employees. However, they did not agree whether nurses can effectively recommend such action. Promotions at the Employer are primarily based on completing necessary training or education programs to qualify for a different job classification. For example, a CNA can take courses to become an LPN, at which point they could be promoted to a nurse position. Or a CNA can take a med aide class to convert to a CMA. In such circumstances, the Employer will pay for the schooling of the employee. DON McReynolds indicated that she takes the opinions of nurses into consideration when deciding who to promote, noting that they have a good sense of who is good at their job. She did agree, though, that the final decision to approve an employee taking classes is hers (at which point she refers the matter on to administration).

4. Reward

The 3½-year nurse testified that he had occasionally rewarded employees on his shift. He said that, for times like a long weekend or as a thank you, he has brought in food such as pizza and wings that he purchased using his own funds. The food is then shared among employees like CNAs as well as nurses. He has also rewarded individual employees as well. The 3½-year nurse did this on his own accord, not at the direction of management. He noted that it is "just a part … of who I am as a person" and that sometimes "the smallest gesture like that will lighten the load" (Tr. 112, 171). Nurses cannot give employees a wage increase or other monetary reward. The nurses do not perform formal employee evaluations—a task reserved for the administration—although nurses may provide input on how employees, particularly newer probationary employees, are performing.

5. Responsibly Directing

As discussed above, there is some general evidence that nurses can assign discreet tasks, such as fetching ice or bringing a dinner tray for a resident, to CNAs. The 3½-year nurse testified that if he assigned a task to a CNA, even if it was daily routine stuff, and the CNA did not complete the task, then he could be held accountable and possibly reprimanded, along with the CNA. Interim Manager Wills agreed that she could be held accountable if a CNA failed to complete an assigned task, but also admitted that had never happened to her. DON McReynolds testified that both the nurse and the CNA are responsible for patient care and if a patient is not receiving proper care, then both the CNA and the nurse would be in trouble. A Progressive Discipline form in the record shows a nurse who received a verbal counseling verification for not ensuring that a CNA completed all the charting. The document noted that if the charting is not completed then the nurse should prepare a discipline for incomplete work by the CNA. That same progressive discipline form also reflected a written verification for the nurse not making sure that the CNAs were in proper uniform. The Nurse job description states they are to monitor the performance of the CNAs and to discipline as needed or to initiate the progressive disciplinary process in the event of improper behavior or infractions by the CNAs.

6. Adjusting Grievances

Under Step 1 of the Nonprofessional CBA, covered employees should discuss a grievance with their immediate supervisor. Administrator Wilson testified that she understood the "immediate supervisor" referenced in Step 1 to be a nurse.[15] Petitioner's Business Agent Octavius O'Large testified that he was unaware of any grievance being processed at Step 1. Rather, to his knowledge, all grievances were written up and processed directly between him and Administrator Wilson at Step 3. The 4-month nurse indicated that, as a previous CNA for the Employer, she had never taken a grievance to a nurse and that in her experience grievances had always been directed to a manager like the DON or ADON.

The 3½-year nurse testified that nurses did not have any role in processing union grievances. Without referencing the contractual grievance procedure, he further testified that he could "adjust grievances" such as addressing interpersonal conflicts between two CNAs or if one CNA was complaining about another CNA not pulling their fair share of the work. In the former situation, the 3½-year nurse would likely move one of the CNAs to a different area of the facility and, in the latter, he would likely speak with them collectively to find common ground. He also testified that some employee complaints were about unequal workloads, in which case he would try to balance the workloads between the involved employees.

7. Other Supervisory Indicia

The parties stipulated that nurses do not have the authority hire, lay off, or recall other employees, or to effectively recommend such actions.

8. Secondary Supervisory Indicia

The record does not contain a great deal of information concerning secondary indicia of supervisory status, and certainly none the parties cited to in their arguments at hearing. Management refers to nurses as "supervisors," as does at least the 3½-year nurse, or testified that they consider nurses to be supervisors. Yet the 4-month nurse indicated she had never been referred to as a supervisor and did not consider the nurses to be supervisors. LPNs (but not RNs) are required to participate in a state-mandated supervisory training course. Nurses do not participate in supervisory or managerial meetings at the facility and do not receive any privileges that are reserved for members of management. When at work, nurses wear scrubs like the rest of the nursing team.

II. SUPERVISORY STATUS

A. Board Law

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

---

[15] The grievance procedure article of the contract does not define the term "supervisor," and although the contract by its terms does require the Employer to furnish Petitioner with a list of all supervisors, no such list was introduced into evidence at the hearing.

> [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 above twelve primary indicia for supervisory status are read in the disjunctive, making possession of any one of the indicia sufficient to establish an individual as a supervisor. *Lakeview Health Center*, 308 NLRB 75, 78 (1992). The Board set forth its seminal three-part test in *Oakwood Healthcare, Inc.*, which finds individuals to be supervisors if: (1) they hold the authority to engage in any one of the 12 listed supervisory functions listed in Section 2(11); (2) their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;" and (3) their authority is held in the interest of the employer." 348 NLRB 686, 687 (2006) (citing *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 713 (2001)).

The Board differentiates between the exercise of independent judgment and the exercise of supervisory authority in a merely routine, clerical, or perfunctory manner, the latter of which does not confer supervisory status. See *Oakwood*, above at 693; see also *J. C. Brock Corp.*, 314 NLRB 157, 158 (1994). The authority to effectively recommend an action means the recommended action is taken without independent investigation by acknowledged 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 902, 906 (2016) (*Veolia I*); *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998).

When exercising independent judgment, the individual must act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data. *Oakwood*, above at 692–693. A judgment is not independent if it is dictated or controlled by detailed instructions set forth in company rules or policies, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement. Ibid. Professional or technical judgments using independent judgment are only considered supervisory if they involve one of the twelve primary indicia. *Entergy Mississippi, Inc.*, 357 NLRB 2150, 2154 (2011) (quoting *Oakwood*, above at 692).

Secondary indicia can also be used as background evidence to support a finding of supervisory status, but they are not dispositive without evidence demonstrating the existence of one of the statutory indicia. See *DirecTV*, above at 1750 (citing *Ken-Crest Services*, 335 NLRB 777, 779 (2001)). Secondary indicia of supervisory status typically include but are not limited to: the individual's designation as a supervisor; attendance at supervisory meetings; participation in supervisory training programs; 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; providing training or mentoring to employees; 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. *PowerBack Rehabilitation*, 365 NLRB 1188, 1189

(2017) (citing *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 890 fn. 4 (2014); *Northcrest Nursing Home*, 313 NLRB 491, 499 (1993)).

The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied rights guaranteed to employees by the Act. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Oakwood*, 348 NLRB at 687.

B. Burden of Proof and Weight of the Evidence

The Board has established the burden to prove supervisory authority rests with the party asserting it, and they must do so by a preponderance of the evidence. *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006). Purely conclusory evidence does not establish supervisory status, but rather, evidence of the employee actually possessing the authority at issue is necessary. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Lastly, if the evidence is conflicting or inconclusive on one of the indicia, the Board will find supervisory status has not been established based on that indicium. *Veolia Transportation*, 363 NLRB 1879, 1884 (2016) (*Veolia II*) (citing *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989)); *G4S Regulated Security Solutions*, 362 NLRB 1072, 1072–1073 (2015). Finally, the sporadic exercise of supervisory authority does not transform an employee into a supervisor. See *Shaw, Inc.*, 350 NLRB 354, 357 fn. 21 (2007); *Oakwood*, above at 693.

If not all putative supervisors in a classification have actually wielded supervisory authority, it does not necessarily defeat a finding of supervisory status. See generally *Fred Meyer Alaska, Inc.*, 334 NLRB 646, 649 fn. 8 (2001). However, a finding of supervisory authority does require actual evidence of supervisory authority demonstrated by tangible examples of employees exerting such authority. See *G4S*, above at 1073 (quoting *Oil Chemical & Atomic Workers v. NLRB*, 445 F.2d 237, 243 (DC Cir. 1971), cert. denied 404 U.S. 1039 (1972)). See also *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Golden Crest*, above at 731. Job titles, job descriptions, or similar documents are not dispositive without independent evidence demonstrating actual possession of the claimed authority. See *Golden Crest*, above at 731 (citing *Training School at Vineland*, 332 NLRB 1412, 1416 (2000)).

In terms of meeting the evidentiary burden to establish supervisory authority, the Board's post-*Oakwood* decisions emphasize 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. *WSI Savannah River Site*, 363 NLRB 977, 979 (2016); *Pacific Coast M.S. Industries*, 355 NLRB 1422 (2010); *Network Dynamics Cabling, Inc.*, 351 NLRB 1423, 1425 & 1436 (2007); *Lynwood Manor*, 350 NLRB at 490; *Austal USA, L.L.C.*, 349 NLRB 561, 561 fn. 6 (2007); *Avante at Wilson*, 348 NLRB at 1057; *Golden Crest*, 348 NLRB at 731; *Croft Metals*, 348 NLRB at 722.

Less weight is given to evidence and testimony without an established foundation in the record. Similarly, the weight of record evidence is attenuated by the passage of time or where it concerns facts or circumstances pre-dating organizational and procedural changes at the Employer. In addition, more weight is awarded to testimony from a witness with direct knowledge of the facts when the instant petition was filed. Affirmative responses to leading questions are devalued because they suffer the weakness of seemingly being the testimony of the

questioner rather than the witness. See generally, *H. C. Thomson, Inc.*, 230 NLRB 808, 809 fn. 2 (1977); see also, *Soltech, Inc.*, 306 NLRB 269, 270 (1992) (observing "some testimony elicited in response to leading questions has little probative weight because it amounts to mere agreement with statements by counsel rather than persuasive testimony by the witness"). Such testimony typically does not constitute the specific detailed evidence necessary to establish putative supervisors possess primary indicia. *G4S*, 362 NLRB at 1072–1073.

C. Application of Board Law to This Case

Of the twelve primary indicia for supervisory status, the Employer and Petitioner have stipulated that nurses do not have the authority to hire, lay off, or recall. The Employer asserts nurses use independent judgment to transfer, suspend, discharge (or at least to effectively recommend such), assign, reward, discipline, responsibly direct, and adjust grievances, and can make effective recommendation regarding promotions. Petitioner asserts that nurses do not have authority to engage in any supervisory indicia vis à vis CMAs, CNAs, or other employees.

As explained in the sections below, the record evidence and examples of nurses' purported supervisory authority are insufficient to meet the Employer's burden. The evidence lacks any real showing of nurses promoting, rewarding, or adjusting the grievances of CMAs or CNAs. Nor does the record demonstrate that nurses, acting with independent judgment, can assign or transfer; discipline, suspend, or discharge employees, or to effectively recommend such actions. The evidence is also insufficient to prove that nurses can responsibly direct employees or are held accountable for the CMAs' and CNAs' performance of directed tasks. Overall, the record evidence lacks the specificity and detail necessary under Board law to establish nurses wield supervisory authority. Accordingly, I find the Employer has not satisfied its burden to establish nurses are supervisors under the Act.

1. Assign and Transfer

The Employer argues that nurses can assign and transfer CNAs and other employees to different areas of the facility, particularly in emergency situations or when someone calls off from work.

The Board defines "assign" as referring "to the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee." *Oakwood*, 348 NLRB at 689. Elaborating on this definition, the Board stated 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.'" Ibid. The authority to transfer is, in essence, the ability to reassign an employee to a different classification, location, or shift.

Assignments must be based on independent judgment to confer supervisory status, but 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 at 979 (citing *Volair Contractors, Inc.*, 341 NLRB 673, 675 fn. 10 (2004)); *Cook Inlet Tug & Barge, Inc.*, 362 NLRB at 1154 (citing *Croft Metals*, 348 NLRB at 722). Independent judgment is also not established by the assignment of recurrent and predictable tasks. *Shaw, Inc.*, 350 NLRB at 355–356; *Croft Metals*, above at 721 fn. 14 (citing *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002); *Bowne of Houston*, 280 NLRB 1222, 1223 (1986)). Conclusively, assignments in a merely routine, clerical, or perfunctory manner or where there is only one self-evident choice do not require independent judgment. *Oakwood*, 348 NLRB at 693.

Thus, for the nurses to be found statutory supervisors, the Employer must show through specific detailed evidence that they assign or reassign CMAs and CNAs to a place, time, or significant overall duties and how such assignments or reassignments are made, including the nonroutine or nonobvious factors they consider. Based on the standards listed above and the evidence in the record, the Employer has failed to establish the nurses' ability to assign and transfer employees.

The CMAs and CNAs are provided with a schedule that is prepared by Office Manager Denney and Staffing Coordinator McNeal. That daily schedule dictates to which shift employees are assigned and what area of the facility. While nurses may need to make changes to the schedule due to, for example, an employee calling off, the evidence fails to establish that nurses exercise independent judgment in making those changes. As an initial matter, the evidence presented at hearing is conflicting, with one nurse indicating that he has full authority to make changes to the daily schedule after it has issued without consulting with McNeal while another nurse indicated she always consults with McNeal first before making changes.[16] While some of that discrepancy may reflect differing levels of experience between the nurses, the daily schedule itself states that changes are not to be made unless there is a call off. But even if the nurse is making a change to the schedule without consulting with McNeal, the evidence demonstrates that nurses must comply with the terms of the Nonprofessional CBA and largely rely on a seniority list (prepared by McNeal) to select a replacement while ensuring that overtime hours are balanced among CNAs.

While no specific detailed instances were provided (and thus the Employer has failed to carry its burden), none of the other examples of nurses changing the assignments of CNAs demonstrates independent judgment. A nurse deciding that a more experienced CNA should be handling a critically ill resident does not demonstrate independent judgment; nor does simply switching the assignments of two CNAs on occasion to avoid conflict between employees or to honor a third-party request. Even in instances of severe weather, nurses are expected to speak to a manager before releasing an employee early or permitting an employee to miss work entirely. See, for example, *Harborside Healthcare, Inc.*, 330 NLRB 13364, 1336 fn. 12 (2000) ("the

[16] The 4-month nurse also testified that she seeks volunteers for such overtime work. In order to establish supervisory authority to assign, the evidence must show the putative supervisor can *require* a certain action to be taken, including mandatory overtime work. *Entergy Mississippi*, 357 NLRB at 2156–2157; *Golden Crest*, 348 NLRB at 729.

Board has found that the authority to transfer employees to other wings of a facility that are short staffed, without more, is routine and not supervisory," citing *Northern Montana Health Care*, 324 NLRB 752 (1997), enfd. in relevant part 178 F.3d 133 (9th Cir. 1999)); *NLRB v. Provident Nursing Home*, 187 F.3d 133 (1st Cir. 1999) (finding routine and nonsupervisory reassignments that involve matching of skills to requirements), enfg. 324 NLRB No. 46 (1997) (not reported in Board volumes); see also *Greenpark Care Center*, 231 NLRB 753, 755 (1977) (finding nonsupervisory where "transfer is temporary in nature, its duration being only the time needed to assist during the emergency or absence").

The few examples of nurses assigning specific duties to CNAs likewise did not demonstrate the use of independent judgment or present the factors the nurse considered in making the assignment. Asking a CNA to get ice for a resident or to bring them a lunch tray seems obvious and nothing more than having a CNA perform the scope of their practice while ensuring that the nurse is complying with their own scope of practice in caring for the resident. Such evidence alone is insufficient to demonstrate independent judgment.

Based on the overall lack of evidence and failure to provide specific detailed examples and the factors the nurses consider, the Employer has failed to carry its burden of proving that nurses are supervisors because they can assign or transfer CMAs and CNAs.

2. Discipline, Suspend, and Discharge

The Employer asserts nurses have the statutory supervisory authority to take and effectively recommend discipline, suspension, and discharge. To establish supervisory status based on discipline, the evidence must not only show that the purported supervisor may discipline employees, but also that they use independent judgement in doing so. *Tree-Free Fiber Co.*, 328 NLRB 389, 391–392 (1999). 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. Judgement is not independent if it is controlled by detailed instructions. Ibid. In addition, 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 908.

"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 (citing *Phelps Community Medical*, 269 NLRB at 490). 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, for example, *Veolia I*, above at 908, 911 (finding conflicting testimony on whether mere issuance of "observation notice," as well as coaching and counseling, constituted discipline).

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 (citing *Oak Park Nursing Care Center*, 351 NLRB 27, 30 (2007); *Ohio Masonic Home*, 295 NLRB 390, 393–394 (1989)). It is the asserting party'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 1884 (citing *Ken-Crest Services*, 335 NLRB at 777–778; *Republican Co.*, above at 99 fn. 8; *Ten Broeck Commons*, 320 NLRB at 809).

Thus, for nurses to be found statutory supervisors, the Employer must show through specific detailed evidence that they actually discipline, or make recommendations to discipline without independent review, which affect the job status or tenure of CMAs and CNAs, including providing evidence of the nonroutine and nonobvious factors nurses consider when making such recommendations and taking disciplinary action.

The Employer failed to establish statutory supervisory authority because the evidence in the record does not show nurses discipline or effectively recommend discipline using independent judgment.

As noted above, the record contains six Counseling Session forms and two Progressive Discipline forms apparently involving discipline issued to CMAs or CNAs by a nurse.[17] However, it is not clear from the record whether those are the entirety of discipline ever issued at the facility, a random sampling, or a collection that was cherrypicked to support one parties' position. The fact that nurses have apparently only issued progressive discipline[18] in two instances over the past many months—and both of those instances occurred just days before the instant petition was filed—indicates that nurses rarely exercise disciplinary authority over purportedly subordinate employees. In fact, the documentary evidence demonstrates that only two nurses out of nineteen have issued progressive discipline, and one of those disciplines was signed off on—literally—by Interim Manager Wills. Such scant, apparently sporadic evidence does not support a finding that nurses are supervisors under the Act.

The Counseling Session form used by the Employer appears to largely serve a reporting function, not a documented form of disciplinary action. One RN testified this was her understanding of the form, that it was more for educational purposes for the employee involved rather than disciplinary. Plus, contractually, CMAs and CNAs are to be given the opportunity to sign an oral warning before it is placed in their personnel file. Yet four of the six counseling session forms in the record are unsigned by the employee and do not reflect that the employee was ever presented with the form prior to it being passed on to management. While the

---

[17] The third Progressive Discipline form was issued to a nurse, not issued by a nurse purportedly disciplining a CMA or a CNA.

[18] Given the dearth of detailed testimony and disciplinary records in evidence, it is not clear to what degree the Employer actually utilizes a progressive disciplinary system despite the language of its Discipline policy. Since employee names are redacted from the records, it cannot be determined if a Progressive Disciplinary form was issued based on a prior Counseling Session form. None of the Progressive Discipline forms reference a prior Counseling Session form being issued as grounds for progressive discipline. The one example of suspension did not document any prior verbal counseling verification or written verification.

Employer purports to use a progressive disciplinary process at the facility, the evidence demonstrates that nurses do not have access to the personnel files of CMAs and CNAs.[19] Without such access, it is hard to imagine that nurses can issue discipline that does not require the intervention of a manager who does have access to the personnel files because the nurse cannot determine whether the employee has a history of misconduct that warrants moving to the next step in the supposedly progressive discipline process.

There is nonspecific conclusory testimony that nurses have the authority to send employees home if they observe a CMA or CNA engaging in misconduct. There was evidence presented of just two specific instances where a nurse sent an employee home for the balance of the shift based on employee misconduct. In one instance, two nurses observed a CNA refusing to clean vomit from a patient. Both nurses prepared Counseling Session forms (both unsigned by the employee in question) and one of the nurses sent the CNA in question home (although neither counseling session form reflects that the CNA was sent home). DON McReynolds ultimately made the decision to terminate the CNA after speaking to the nurses who were involved. In doing so, McReynolds noted that "there's really not much to do with someone who's refusing to perform tasks that need to be done" (Tr. 611). Given that even McReynolds apparently did not need to exercise independent judgment in deciding the CNA needed to be discharged, it is easy to conclude the nurse who sent the CNA home likewise did not need to exercise independent judgment to take that action. For the other suspension referenced in the record, the nurse had been having issues with the CNA "all weekend long." On the following Monday, both the nurse and Interim Manager Wills observed the same issues continuing. Wills testified that the nurse made the decision to send the employee home; the nurse in question did not testify at the hearing. However, in testifying about the suspension, Wills stated that "we" approached the employee to let her know that the conduct "we" had seen was not acceptable and that "we" were sending her home. Given this testimony, it is impossible to separate the nurse's actions from Interim Manager Wills to find that the nurse (rather than Wills) exercised independent judgment in making the decision to send the CNA home for the balance of her shift. Further, the nurse was having issues with the CNA in question throughout the weekend, but the nurse did not attempt to send the employee home until Wills reported to work and could assist in the matter. Even assuming the nurse made the decision in this singular situation, the Board has long found evidence limited to an isolated instance of exercising supervisory authority fails to establish supervisory status under Section 2(11) of the Act. See, for example, *Republican Co.*, 361 NLRB at 100 (citing *Shaw, Inc.*, 350 NLRB at 357 & fn. 21 (2007); *Franklin Home Health Agency*, 337 NLRB at 829; *Chevron U.S.A., Inc.*, 309 NLRB 59, 61 (1992)).

As for discharges, it is clear that nurses do not have the authority to discharge employees and the evidence does not support the conclusion that nurses can effectively recommend such action. While there is some testimony that nurses can make a recommendation for whether an employee should be retained, it is also clear that management conducts its own investigation to determine if discharge is appropriate rather than relying solely upon the recommendation of a nurse. DON McReynolds noted that she is in charge of discharging employees on the nursing side because she has to ensure that the collective-bargaining agreement is complied with, presumably because nurses are not vested with that authority. And in the specific example where

[19] Employee personnel files on the nursing side are kept in a locked file cabinet in the DON's office.

McReynolds did consider the recommendation of the nurse to discharge an employee, she noted that the decision was clear based CNA's conduct, indicating that no real independent judgment was needed to make that decision.[20]

Given the above, the Employer has failed to carry its burden of proving that the nurses in the proposed bargaining unit constitute supervisors under Section 2(11) of the Act.

3. Promote

The parties stipulated that nurses do not have the authority to promote CMAs and CNAs. However, the Employer asserts that nurses do have the ability to effectively recommend promotions.

Section 2(11) includes promote in its enumeration of supervisory functions, but not evaluate, although evaluations by frontline supervisors are often the basis on which promotions are made. To identify the line whereby the ability to evaluate becomes enough to demonstrate supervisory status, the Board has repeatedly held that an evaluation that does not, by itself, affect the wages and/or job status of the employees being evaluated is insufficient. *Harborside Healthcare*, 330 NLRB 1334, 1334 (2000); *Elmhurst Extended Care Facilities*, 329 NLRB 535 (1999). As noted above, to effectively recommend a promotion also means the nurse's recommended action is taken without independent investigation by management.

The record here contains few specific details concerning promotions. DON McReynolds discussed promotions in terms of CMAs or CNAs taking additional schooling to either get a certification or a degree which could result in a change in classification and thus is effectively a promotion. In such circumstances, the Employer pays for the additional training or education that the employee receives. Interim Manager Wills vaguely discussed evaluating employees and that many employees are taking classes to further their career.[21] McReynolds indicated that the decision to promote an employee rested with management. McReynolds also noted that although she may take a nurse's recommendation into consideration, she in turn has to pass her own recommendation on to the administration before the training (and perhaps ultimate promotion) can be commenced. Further, an employee being approved to take classes does not guarantee the employee will pass the classes and, thus, be eligible for promotion.

In these circumstances, the evidence fails to establish that nurses can effectively recommend promotions for CMAs and CNAs. The record contains no detailed information about how employee performance evaluations are conducted or used, but it is clear nurses do not prepare formal employee evaluations because that task that is left to the administration. While DON McReynolds indicated that she considers a nurse's recommendation for a CNA to receive

---

[20] Interim Manager Wills testified about a situation where a CNA was suspended and then DON McReynolds seriously considered Wills's recommendation that the employee in question should be terminated. Setting aside the fact that Wills's testimony was largely the result of leading questions, Wills was a manager at the time the situation occur and the record does not distinguish whether Wills was making her recommendation as a nurse in the proposed bargaining unit or as a manager whose recommendation would likely be given greater weight.

[21] Wills was hired as a nurse in October 2025 and promoted to Interim Memory Care Manager in December 2025. Given her short time in either position, it is hard to distinguish from Wills's testimony whether she was testifying solely based on her experience as a nurse or whether her testimony reflected her position as an interim manager.

additional training so they can be promoted, she also noted that she does not always follow such recommendations. For example, when a nurse recommended a CNA still in their probationary period as a good candidate for promotion, McReynolds rejected the recommendation based on the CNA's lack of experience with the Employer.[22] And as McReynolds indicated, even if a nurse is making a recommendation that an employee receive additional training, McReynolds makes her own independent determination and then ultimately the administration has the final say. In such circumstances, the nurse is twice-removed from the final decision-making authority and there appears to be independent investigation by management, so it cannot be found that nurses effectively recommend promotions.

4. Reward

The Employer asserts that nurses have the ability to reward CMAs and CNAs, noting that one LPN has purchased pizza or other food items for staff on his shift.

The Board will find the authority to reward where putative supervisors use independent judgment in granting merit wage increases or otherwise substantially impacting the earnings of other employees, for example, awarding bonuses. More commonly, the Board analyzes whether a putative supervisor effectively recommends rewarding employees by virtue of evaluating their performance. In *Wal-Mart Stores, Inc.*, the Board found effective recommendation to reward where the supervisor completed employee performance appraisals and the ratings were directly linked to the merit increase received by the employees. 335 NLRB 1310 (2001). Thus, for nurses to be found statutory supervisors by rewarding employees, the Employer must show by specific detailed evidence that merit increases constitute rewards and that nurses have the ultimate authority to effectively recommend the rewards, including the nonroutine or nonobvious factors they consider when doing so.

Based on the standard listed above, the Employer's purported evidence of nurses' ability to reward CMAs and CNAs fails to establish as much. Importantly, the Nonprofessional CBA establishes the wage and bonus structure for bargaining unit employees, thus eliminating the possibility of a nurse exercising independent judgment to provide a merit increase. Any recommendation a nurse might make regarding a CMA's or CNA's performance for evaluation purposes likewise would not have any effect on merit increases for those employees.

The Employer presented evidence of only a single nurse who had brought in food to share with CMAs, CNAs, and other nurses. The 3½-year nurse indicated other nurses had done so as well. However, no specific detailed information was provided in that regard, such as how frequently it happens (other than that it happens "a lot"); nor does the record reflect the nonroutine or nonobvious factors that nurses consider in making such "rewards," other than a vague reference to it being a long weekend or an individual who was a good asset or did something great. Even on those instances where the 3½-year nurse chose to bring in food for his coworkers, it was on his own accord and management did not reimburse him for the purchase or otherwise cover the expenses. The 3½-year nurse also recognized that he did it because it is just who he is as a person. As such, bringing in pizza or other food items at his own expense is

[22] Other times an employee who a nurse recommended for "promotion" did not receive the promotion because the employee in question was not willing or able to take the required coursework.

divorced from the employment relationship and appears to be communal and de minimis in nature and fails to demonstrate that nurses reward employees within the meaning of Section 2(11) of the Act. Given all the above, the evidence is insufficient to sustain the Employer's burden of proof for this indicium.

5. Responsibly Directing

The Employer argues that nurses responsibly direct the work of CMAs and CNAs and can be held accountable for the CMAs' and CNAs' performance of directed tasks.

The Board finds direction when it is shown that the supposed supervisor determines what tasks are done and by whom. See *Oakwood*, 348 NLRB at 691. Direction can also be shown by demonstrating that the asserted supervisor has been delegated the ability to take corrective action. Ibid. 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 fn. 2, 983–984 (2007), enfd. mem. 280 Fed.Appx. 366 (5th Cir. 2008)). To responsibly direct, the so-called supervisor must also be held accountable for the performance of the task they supposedly direct. *Oakwood*, above at 692. As such, the ability to take corrective action without supporting evidence of accountability does not confer supervisory status. *Community Education*, above at 85.

The Employer introduced the job description for the nurses into the record, but no other job descriptions for any of the other classifications referenced in the record. However, no witness actually testified to having seen or reviewed the job description prior to the hearing. Rather, the 3½-year nurse was asked leading questions about the contents of the job description and asked to confirm whether he performed the listed tasks. The job description does reflect that nurses are expected to monitor the work of the CNAs and to initiate discipline if necessary. But the job description alone is "paper authority" and is insufficient to establish supervisory authority. See *Golden Crest*, 348 NLRB at 731; see also, for example, *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).

Witnesses testified about nurses being held accountable for the actions of CNAs, but few specific concrete examples of that actually happening were presented. DON McReynolds believed a nurse had been disciplined when a CNA failed to report that a resident with a catheter had not had any output. But she could not recall the specifics of the situation or whether discipline was actually issued. Page 1 of Employer's Exhibit 4 appears to reflect a nurse who was issued verbal and written warnings for what could be seen as failing to properly supervise a CNA. Yet no witness testified about the underlying circumstances of that discipline, even though McReynolds served as the "witness" for the two warnings and testified at length about other matters during the hearing. It is also hard from the record to distinguish whether a nurse might be held accountable and disciplined because they failed to supervise a CNA or because the nurse failed in their own patient care obligations. For example, when McReynolds testified about a nurse possibly being disciplined when a CNA failed to report the lack of output from a resident with a catheter, it seems clear the nurse in question also owed a duty to that resident under their

scope of practice. Without additional details and concrete examples, it is not clear whether the nurse was disciplined solely for failing to supervise or if they were disciplined for not ensuring the proper patient care was provided. Similarly, the verbal warning apparently issued to a nurse when a CNA failed to chart does not clearly demonstrate that the nurse was being disciplined solely for the failure to supervise rather than failing to meet their own standard of care that required proper patient charting.

Accordingly, I find the record is insufficient to demonstrate nurses' responsible direction of CMAs' and CNAs' work. Therefore, the Employer has failed to meet its burden of showing the nurses responsibly direct under Section 2(11) of the Act.

6. Adjusting Grievances

The Employer asserts that nurses have the authority to adjust the grievances of the CMAs and CNAs, either informally or as the designated immediate supervisor in Step 1 of the contractual grievance procedure.

To establish supervisory status based on the ability to adjust grievances, the Employer must establish nurses have the authority to resolve workplace complaints beyond minor disputes, using independent judgment. See *Ken-Crest Services*, 335 NLRB at 778–779; 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*, above at 865. Further, it is insufficient to show the purported supervisor simply has some involvement in the grievance procedure. Rather, the Employer must present evidence demonstrating the role the purported supervisor plays in the procedure and independently adjusts employee grievances. *Training School at Vineland*, 332 NLRB 1412, fn. 2.

Here, the evidence fails to establish that nurses adjust employee grievances pursuant to Step 1 of the collective-bargaining agreement. The two current nurses who testified indicated they were not involved in processing union grievances. Although Administrator Wilson believes that nurses are the "immediate supervisors" contemplated in Step 1 of the grievance procedure, no evidence was submitted of nurses acting on behalf of the Employer to resolve contractual grievances. Rather, as Business Agent O'Large testified, it appears all grievances are initiated at Step 3 of the grievance procedure (essentially skipping over the first two contractual steps). Beyond the formalized grievance procedure itself, while no specific examples were presented, the general examples of nurses resolving employee grievances largely involved dealing with interpersonal conflicts or balancing workloads. However, such intervention by a nurse does not rise to the level of adjusting grievances that the Board considers to vest a person with supervisory authority such that they lose the protections of the Act. The Employer has failed to carry its burden of demonstrating that the nurses are supervisors because they adjust grievances.

7. Secondary Supervisory Indicia

As explained above, secondary indicia can support a finding of supervisory status but only where evidence indicates the existence of at least one of the primary indicia, which I find does not exist. *Transdev Services, Inc.*, 373 NLRB No. 122, slip op. at 9 (2024) (finding

secondary indicia immaterial where no primary indicium established, citing *Ken-Crest*, above at 779); *Veolia II*, 363 NLRB at 1888 (same); see also *St. Francis Medical Center-West*, 323 NLRB 1046, 1048 (1997).

III. 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.[23]

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. The following employees of the Employer constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> **Included:** All full-time and regular part-time employees in the classifications of Registered Nurse (RN) and Licensed Practical Nurse (LPN) employed by the Employer at its l 130 West 53rd St., Davenport, Iowa, facility.
>
> **Excluded:** All nonprofessional employees, PRNs, office clerical employees, managers, guards and supervisors as defined in the Act, and all other employees.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Food & Commercial Workers Local 431.

---

23 The Employer, The Lutheran Home for the Aged Association – East d/b/a Davenport Lutheran Home, is an Iowa non-profit corporation with a place of business located at 1130 West 53rd Street, Davenport, Iowa, where it provides residential skilled nursing care. During the past twelve months, a representative period of time, the Employer derived gross revenues in excess of $100,000 from all sales and services. During the same representative period, the Employer purchased and received at its Davenport, Iowa facility goods and services valued in excess of $5,000 directly from suppliers outside the State of Iowa.

A. Election Details

The election will be held on **Wednesday, June 17, 2026** from 6:30 a.m. to 7:30 a.m. and 1:30 p.m. to 3:00 p.m. in a room or space to be determined by the Regional Director at the Employer's facility located at 1130 West 53rd Street, Davenport, Iowa.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Saturday, May 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(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names (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 **June 9, 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.nlrb.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.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. 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: June 5, 2026

Colleen M. Maples, Regional Director
National Labor Relations Board, Region 25
Minton-Capehart Federal Building
575 North Pennsylvania Street, Suite 238
Indianapolis, Indiana 46204-1520